



## **HOW TO DO A CONGRESSIONAL VISIT**

A personal visit with a Member of Congress is an effective way to emphasize your interest in an issue.

Some tips for meeting a Member to urge support or opposition to your issues:

1. Select a spokesperson if others are going with you and agree on your presentation.
2. Know the facts, both legislative and related to your position. Know relevant pieces of legislation, including the bill number and title if applicable. You can visit <http://www.thomas.gov/> for current information about legislation or review the section by section summaries provided in this packet.
3. Present the facts in an orderly, concise and positive manner.
4. Relate the negative impact of policies that you oppose and suggest solutions.
5. Leave fact sheets (DWN will provide this material and you can bring your own as well).
6. Encourage questions and facilitate open discussion.
7. Ask for favorable consideration, thank the staff person or Member for his/her time and leave promptly.
8. Remember, you will be most effective by being yourself.

**Once you know what you want your Members of Congress to do and are committed to following up until they do it, remember these ABCs:**

**Accurate:** To build a working relationship and get action, you need to be a credible source of information. Never bluff. If you don't know something, just say so. Tell them you will find out and get back to them. This is a great opportunity to demonstrate to your legislator's staff person that you follow up!

**Brief:** Members of Congress and their staffs are incredibly busy and so are you. Most Members of Congress represent over 600,000 people. They appreciate it when you get to the point and respect their time. Because your meeting or call might be interrupted, get to your request in the first few minutes.

**Courteous:** Always, always be courteous. A "How are you?" after the initial hello works wonders! On the other hand, being abrasive is almost always counterproductive, and it provides a good excuse to ignore your request.

In addition to the above ABCs, remember the following:

### **GAUGE THEIR INTEREST**

Make an effort to gauge your legislator's interest and to match your requests to their initial level of interest. For this visit, begin with the simple 'ask' listed at the end of this package.

### **BE SPECIFIC**

In your communications with Members of Congress, make a point to mention the specific ask.

## **BE PERSISTENT**

If you find that the staff people you need to speak with are out of the office, leave a message for them with your name and number. If they don't return your call within two to three days, then call again. Keep track of your calls, but remember that they are very busy.

### **Making the Presentation**

- **Show up!** If an appointment has been made for you, please attend and arrive on time. Staffers have little available time and their view of our organization may be irreparably damaged if they feel that time has been wasted.
- **Be on time!** Present yourself to the staffer at the front desk. Be aware, they may be very young, as many offices are staffed by college interns.
- **Begin by introducing yourselves.** If you are a constituent, let the staffer know.
- **Explain to the staffer why you asked for the meeting.**
- **Present your concerns simply and directly.** Get to your "bottom line" immediately. Be brief, direct, courteous, and positive. When presenting each issue, do not assume that your legislator or the staff has any prior knowledge of the subject. Presentation of each topic roughly should follow this outline:

**BACKGROUND:** Explain the issue in the simplest possible terms.

**IMPACT:** Explain how the issue directly affects your community or the group you represent. Use personal examples to humanize the issue. Note relevant written materials, including short background papers, newspaper articles, and favorable editorials and op-ed pieces. Articles from local newspapers are especially salient as legislators pay close attention to local opinions.

**RECOMMENDATION:** Indicate what you would like your legislator to do. Discuss important immigration legislation or issues currently before Congress and how you hope he or she will vote. If you want your elected officials to support a specific issue, explain how your community has been impacted, and the consequences in concrete. Finally, ask your legislator to support legislation that would authorize such reform.

### Important Tips

- **Be positive and constructive.** Avoid direct criticism, but be firm in your position. Politely answer questions and concerns, but if you disagree, make your point and move on. Remember, you are meeting with the Member or staff person to inform him/her about your positions on issues.
- **If you do not know the answer to a question, say so, and promise to get back with the answer.** Never give an answer that you are unsure of. Be sure to follow up with your answer as quickly as possible after the meeting.
- **Make sure you do not do all of the talking!** Give the staffer or legislator opportunities to ask questions or state his or her opinion. Members and staff will appreciate the chance to be heard. Also ask questions.
- **Stay away from jargon and acronyms.** Remember that your legislator and their staff deal with dozens, if not hundreds, of issues each week, each with its own "language."

- Thank your legislator if they have been supportive. They get thanked far less than they get criticized. They will appreciate your recognition.
- If advocating for a certain position on a bill, ask how the legislator plans to vote. If the legislator seems to support your position, ask him/ her to do something beyond voting the “right” way, i.e. speak to other Members, talk to the Administration, offer a positive amendment, etc.

### **Following Up After the Meeting**

- Send a note thanking the legislator or staff person for meeting with you, especially if they take action, briefly summarizing the main points of the meeting.
- Commend them publicly, including letters to the editor or items in newsletters. (Be sure to share them with their staff.)
- Remember to follow up with responses to any questions the legislator or staff person asked but you could not answer at the time.
- Get the name of the staff person you speak to and try to deal with the same person each time. Remember that if your representatives are helpful and you praise them publicly, next time they may help even more. The ultimate goal is to build a positive, long-term relationship for achieving human rights goals.
- Do not think of the meeting as an isolated event. Although you may not have a face-to-face meeting again for some time, invite your elected officials to speak at an event or meeting. Find creative ways to maintain your dialogue with the legislator’s office, i.e. send positive newspaper articles, call just before an important vote, etc.
- Report back to DWN. There is a post-meeting form included in your packet. These reports are invaluable in developing legislative strategies and tracking legislators’ positions on issues important to the network.

### **Suggested Meeting Agendas for Congressional Office Visits**

The agenda and structure of your meeting will depend on the amount of time you have been able to schedule with your legislator or one of their staff members. We recommend the following agendas for your meeting depending on the amount of time you have. We have also suggested approximate amounts of time to spend on each item in the agendas.

#### **30 Minute Meeting**

- Introduction: briefly introduce members of the delegation, organizations represented (5 minutes)
- Introduce the issue: we strongly suggest you use the talking points DWN provides you (10 minutes)
- Make the request: Again, refer to the talking points DWN provides you (3 minutes)
- Allow time for questions (10 minutes)
- Thank-you and schedule a time to follow up if needed (2 minutes)

## **15 Minute Meeting**

- Introduction: briefly introduce members of the delegation (2 minutes)
- Introduce the issue: we strongly suggest you select a few of the talking points DWN provides you (8 minutes)
- Make the request: Again, refer to the talking points (3 minutes)
- Thank-you and schedule a time to follow up if needed (2 minutes)

Keep in mind that these are suggested meeting agendas to optimize your time. Feel free to modify them as you please.

### **Check List To Go Over Before A Congressional Office Meeting**

Be sure to remember the items listed below for your Congressional office meeting(s). We suggest you go over the list the night before a meeting and put all documents you are taking with you for the visit in one place so you do not forget anything.

#### **What to take with you to your meeting(s):**

- Packet to be left with each Congressional office which will be provided to you at the DWN conference.
- Congressional talking points included at the end of this guide.
- Bring with you a pen and pad of paper to take notes at your meeting. Be sure to get the contact information of the person with whom you meet so you can report that information back to DWN.

#### **Other items to keep in mind:**

- If possible, dress in business attire for any office visit you make. This will create a more professional environment.
- Plan on introducing DWN to the Senator or Representative or his or her staff at the beginning of the meeting.
- Be sure to thank the person with whom you meet for taking time to see you. It is advisable to send a follow up hand written thank you letter, even if the meeting does not go well. This will help build your relationship with the office!
- Consider bringing copies of any meeting agenda you develop for your Congressional office visit (or visits) to keep everyone who is participating on track.
- Finally, once you have completed your meeting, please fill out a meeting debrief immediately.
- Leave your contact information with the office.

## Materials to leave with your Representative or Senators

When you meet with your Representative or Senators' offices it is a good idea to leave behind some concise materials. Each group will receive a packet to leave behind at each visit. These packets will include:

1. DWN Background flier
2. The DWN flier: *Restoring Accountability to U.S. Immigration Enforcement*
3. The Real Deal on Detention Fact Sheet
4. A list of relevant detention centers
5. LIRS and DWN flier: *The Facts on Immigration Detention*
6. Immigrant Justice Network, "A Dangerous Merger," Fact Sheet on ICE ACCESS programs such as Secured Communities, 287(g), and the Criminal Alien Program
7. LIRS Summary of Immigration Detention Bills in the 111<sup>th</sup> Congress
8. Child Citizen Protection Act – Section by Section Summary
9. Associated Press: *Analysis shows how illegal immigrants face long detention and have few rights* by Michelle Roberts

## ***Congressional Talking Points***

*Use these talking points when visiting Members of Congress. Do not give this document to Members of Congress. Instead, leave your congressional representatives with the folder provided at the conference.*

### **ISSUES REGARDING ENFORCEMENT & DETENTION TO RAISE WITH MEMBERS OF CONGRESS**

**Talking Point:** The current immigration enforcement and detention system lacks clear and consistent objectives and fails to protect fundamental due process and human rights. DHS should be required to institute a proportional enforcement policy to ensure targeted and calibrated enforcement of our immigration laws.

**Background:** DHS pledged to combat serious criminal activity through immigration enforcement. Instead, DHS has engaged in indiscriminate home raids and traffic stops where the vast majority of individuals swept up by these enforcement actions posed no risk to public safety. These enforcement initiatives have become tools to inflate arrest and deportation quotas rather than adhering to the agency's stated mission of protecting public safety. This current enforcement strategy frequently has resulted in racial profiling and due process violations against entire communities, including legal residents and citizens.

**Talking Point:** Implement **enforceable** and humane detention standards and create independent oversight of detention facilities to ensure that all ICE detainees are treated fairly and humanely.

**Background:** Since 2003, there have been over 90 reported deaths of detained immigrants. According to reports by the DHS Office of Inspector General (OIG) and the U.S. Government Accountability Office (GAO), detainees are frequently denied appropriate medical care, visitation, legal materials, functioning telephones, and access to counsel, despite ICE's creation of detention standards and an internal review process.

**Talking Point:** Direct DHS to put into place cost-saving secure, community-based Alternatives to Detention programs.

**Background:** Our current detention system is not cost-effective and needlessly relies on an incarceration model despite evidence that cost-saving community-based alternatives to detention are successful. On any given day, 33,400 people are in ICE custody at a cost of approximately \$99 per day per person while proven community-based alternatives to detention cost as little as \$12 per day per person on average. According to ICE, Alternatives to Detention programs have shown "tremendous promise" in ensuring individuals' attendance at immigration proceedings while helping the agency use detention space and limited resources more efficiently.

**Talking Point:** Halt federal programs authorizing state and local law enforcement agencies to enforce immigration law until DHS has implemented appropriate oversight mechanisms and supervision of local law enforcement agencies to guide the uniform application of these agreements and ensure against civil rights violations.

**Background:** DHS has authorized state and local law enforcement agencies to enforce federal immigration law through a variety of initiatives under its ICE ACCESS program (Agreements of Cooperation in Communities to Enhance Safety and Security) such as Secure Communities and 287(g) programs. The stated objective of these programs is to apprehend dangerous individuals who pose a threat to public safety. However, ICE has been unclear about its priorities and has failed to provide adequate oversight for the programs. As a result, local agencies are using their authority under ICE ACCESS agreements to detain individuals who pose no risk to communities. These programs have led to local law enforcement's use of unfounded stops, racially motivated questioning, searches, and arrests that are often baseless, and frequently have resulted in reports of racial profiling and other human rights violations that undermine community policing goals because local law enforcement has lost the trust and cooperation of immigrant communities.

**Talking Point:** DHS should be directed to terminate the 287(g) program. DHS has released a new standardized Memorandum of Agreement (MOA) that the agency will use in its expanded 287(g) program, which grants state and local law enforcement agencies federal immigration enforcement authority. The new MOA would do little or nothing to correct the egregious racial profiling and civil rights abuses that have occurred under the program, and in some respects the new MOA is actually worse than the original.

**Background:** DHS's proposed changes to the program not only fail to correct its serious flaws, but also create new ones. The new MOA expands the powers of 287(g) officers, lessens the amount of experience a 287(g) law enforcement official should have (from two years law enforcement experience to one), and maintains vague requirements for data collection. Under the new agreement, participating local law enforcement agencies are required to pursue all criminal charges that originally caused the offender to be taken into custody. The MOA does not include any measures to ensure that local enforcement officials prioritize certain categories of suspected violators, such as requiring that arrest statistics reflect that local officials prioritize high-level targets, requiring agencies to implement an effective prioritization system or preventing the use of local resources to go after low-priority offenders.

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*Remember to encourage congressional representatives to visit their local detention facility. A complete list of federal and private detention centers in the U.S. can be found in your packet.*

**Summary of Immigration Detention Bills in the 111<sup>th</sup> Congress**  
**Prepared by Lutheran Immigration and Refugee Service, Last Updated August 14, 2009**

**House Detention Bills**

1. **H.R. 1215: Immigration Oversight and Fairness Act (Rep. Roybal-Allard, D-CA)**
2. **H.R. 3531: HELP for Separated Children Act (Rep. Woolsey, D-CA)**

**Senate Detention Bills**

3. **S. 1549: Protect Citizens and Residents from Unlawful Detention Act (Sen. Menendez, D-NJ)**
4. **S. 1550: Strong STANDARDS Act (Sen. Menendez, D-NJ)**
5. **S. 1594: Secure and Safe Detention and Asylum Act (Sen. Lieberman, I-CT)**

**H.R. 1215: Immigration Oversight and Fairness Act**

**Sponsor: Rep. Lucille Roybal-Allard (CA-34<sup>th</sup>)**

**Introduced: 2/26/09**

**Co-Sponsors: 31**

**Last Action: Referred to House Judiciary Committee, 3/16/2009**

The Immigration Oversight and Fairness Act would:

- Strengthen accountability and oversight of the immigration detention system by codifying in statute and requiring regulations for standards governing immigration detention facilities. H.R. 1215 covers more than 15 different areas of detention standards including medical treatment, sexual abuse, the use of force, access to telephones and legal materials, and procedures for detainee grievances.
- Ensure that unaccompanied immigrant children are treated appropriately when they come into contact with DHS officers. H.R. 1215 would facilitate speedy transfers of children to better equipped shelter facilities, increase training for immigration officers who work with unaccompanied youth, and ensure adequate nutrition, bedding and care of children in custody.
- Reduce the unnecessary and costly use of detention, by improving and expanding cost-effective alternatives to detention. H.R. 1215 requires that detention decisions be made on a case-by-case basis and that the least restrictive option, such as release, be considered before alternatives to detention are used.
- Establishes screening protocols to ensure that vulnerable individuals, such as asylum seekers, children, the elderly, and pregnant women, are treated humanely and identified for release and alternatives to detention programs

**H.R. 3531: Humane Enforcement and Legal Protections (HELP) for Separated Children Act**

**Sponsor: Rep. Lynn Woolsey (CA-6<sup>th</sup>)**

**Introduced: 7/31/09**

**Co-Sponsors: 5 → Reps. Clarke (D-NY), Honda (D-CA), Polis (D-CO), Kilpatrick (D-MI) and Roybal-Allard (D-CA)**

**Last Action: Referred to the Committee on the Judiciary and Ways and Means, 7/31/09**

The HELP for Separated Children Act would:

- Establish guidelines and procedures for immigration-related enforcement activities. Such procedures include initial screening of all persons apprehended to ascertain legal status, coordination with social service agencies that can provide assistance to apprehended immigrants and screen for vulnerable populations; coordination with medical personnel; curtailing enforcement activities near certain community institutions; providing persons apprehended with telephone access; ensuring that the best interests of children are considered in decisions relating to detention and release; among other steps.
- Provide basic protections for vulnerable populations such as requiring immediate screening to identify vulnerable individuals and providing release options for these individuals, including enrollment in alternatives to detention programs.
- Require state child welfare agencies to incorporate protections for separated children into their child welfare plans. Such protections include required coordination with DHS and other law enforcement agencies to ensure the appropriate and humane treatment of separated children.
- Require the Secretary to report to Congress on the impact of enforcement activities on U.S. citizens, legal resident, and vulnerable populations.
- Require detention facilities to take steps to ensure family unity and best outcomes for families. Such steps include providing specialized training for personnel and ensuring the detained parents have access to and communication with their children.

**S. 1549: Protect Citizens and Residents from Unlawful Detention Act**

**Sponsor: Sen. Robert Menendez (D-NJ)**

**Introduced: 7/30/2009**

**Co-sponsors: Sens. Gillibrand (D-NY) and Kennedy (D-MA)**

**Last action: Referred to the Senate Judiciary Committee, 7/30/09**

In recent years, the Department of Homeland Security has used aggressive enforcement measures to detain and deport undocumented immigrants. These enforcement measures, however, are not governed by regulations that sufficiently protect against errors and abuses. S. 1549 would:

- Require DHS to take certain steps to ensure that citizens and legal permanent residents are protected in case they are detained during an immigration-related enforcement activity. These steps include requirements that *Miranda*-like warnings and lists of free or low-cost legal services be given to aliens upon apprehension, providing detainees with prompt access to telephones, granting custody determinations before an immigration judge to persons detained for more than 72 hours, ensuring that detainees are not transferred if transfer would prejudice their cases or limit access to counsel and family, among others.
- Require ICE to screen each detainee to determine membership in a vulnerable group. Individuals in vulnerable groups would be eligible for conditional release or enrollment in alternatives to detention programs.
- Requires the Secretary to submit annual reports to Congress describing the impact of worksite operations and fugitive operations on United States citizens, lawful permanent residents and other lawfully present individuals.
- Create a position of Immigration and Customs Enforcement Ombudsman, who would be responsible for oversight of detention facilities.

**S. 1550: Safe Treatment, Avoiding Needless Deaths, and Abuse Reduction in the Detention System Act  
(Strong STANDARDS Act)**

**Sponsor: Sen. Robert Menendez (D-NJ)**

**Introduced: 7/30/2009**

**Co-Sponsors: Sen. Gillibrand (D-NY)**

**Last Action: Referred to the Committee on the Judiciary, 7/30/2009**

The Strong STANDARDS Act would:

- Establish minimum requirements in 15 different areas of detention standards that the Secretary of Homeland Security must meet to ensure that all persons detained are treated humanely and granted the protections of the Act. These areas include quality of medical care, access to telephones, limitations on confinement and shackling, protections against physical and sexual abuse, access to counsel, and protections for vulnerable individuals.
- Require rulemaking regarding the enforcement of and compliance with the requirements in the bill.
- Require the Secretary to appoint and convene a detention commission comprised of government officials and independent expert to investigate, evaluate, and report to Congress on compliance
- Require the prompt reporting of all deaths in detention facilities.

**S.1594: Secure and Safe Detention and Asylum Act**

**Sponsor: Sen. Joe Lieberman (I-CT)**

**Introduced: 8/6/2009**

**Co-Sponsors: 2 → Sens. Kennedy (D-MA) and Akaka (D-HI)**

**Last Action: Referred to the Committee on the Judiciary, 8/6/2009.**

The Secure and Safe Detention and Asylum Act would provide safeguards against faulty asylum procedures, set forth procedures governing detention decisions, and provide for other reforms of the Department of Homeland Security's detention system. S. 3114 would:

- Ensure that all detainees in immigration and asylum proceedings go through a legal orientation program.
- Require the Secretary to promulgate new standards or modify existing ones to improve conditions in detention facilities. The Secretary shall also ensure that prompt and adequate medical care is provided at no cost to detainees.
- Require the Secretary to promulgate special standards for non-criminal detainees and vulnerable populations.
- Establish an Office of Detention Oversight responsible for inspecting detention centers, reporting to Congress, reviewing complaints by detainees, reporting on detainee deaths, and other duties.
- Establish a secure alternatives program under which an alien who has been detained may be released under enhanced supervision.
- Require construction or use of secure but less restrictive detention facilities.

## Prevent Detainee Deaths and Abuse Act

### Section by Section Summary

*Prepared by Lutheran Immigration and Refugee Service*

**Sec. xx: Definitions.** This section defines “detention,” “detention facility,” and “short-term detention facility.”

#### **Sec. xx: Detention Conditions**

*This section (a) provides minimum requirements that the Secretary of Homeland Security must meet to ensure that all persons detained are treated humanely and granted the protections of the Act; (b) requires rulemaking regarding the enforcement of the section and the promulgation of regulations that would ensure compliance with the requirements of subsection (a); (c) creates a Detention Commission comprised of government officials and independent experts responsible for investigations of detention facilities and reporting to Congress; and (d) requires immediate reporting of the death of any individual in DHS custody or en route to or from DHS custody.*

##### (a) Detention Requirements

Requires the Secretary to comply with several requirements. Many of the requirements also apply to short-term detention facilities.

- (1) **Quality of Medical Care:** Because detainees are incarcerated and have no ability to seek medical care from independent providers, this section ensures that detainees receive adequate medical, mental health, and dental care, including comprehensive intake screenings. The Secretary shall respond within 72 hours to requests for authorization to provide care and provide an administrative process for handling appeals of denials of treatment. The Secretary shall cease use of any facility that fails to maintain accreditation for more than one year. Protections are provided against the forced administration of psychotropic medications. The section requires that individuals with medical conditions be considered for release options. The section also requires DHS to maintain complete and confidential medical records for every detainee, accessible within 72 hours to detainees or their designees.
- (2) **Transfers:** This section restricts transfers of detainees to another facility if such transfer would impair an attorney-client relationship, prejudice the detainee’s legal case, or negatively impact the detainee’s health, unless there are emergency circumstances. This section also requires the Secretary to provide notice to the detainee 72 hours before the transfer and the detainee’s legal counsel 24 hours after the transfer.
- (3) **Access to Telephones:** This section establishes requirements to guarantee that all detainees have reasonable access to telephones including protections for privacy.
- (4) **Physical and Sexual Abuse:** This section requires that detention facilities and short-term detention facilities take measures to prevent sexual abuse and sexual assaults and provide treatment for victims of such abuse.
- (5) **Limitations on Solitary Confinement and Strip Searches:** Solitary confinement, shackling, and strip searches may only be used when there is an imminent safety or security risk, and may not be used on vulnerable women and children.
- (6) **Location of Detention Facilities:** This section requires that, by 2012, all new facilities be located within 50 miles of a city where there is a demonstrated capacity to provide free or low-cost legal representation.
- (7) **Translation Capabilities:** This section requires that detention facilities and short-term detention facilities employ qualified bilingual staff; provide alternative translation services when trained bilingual staff members are unavailable; and provide translated notices and written materials to detainees.
- (8) **Legal Access:** This section ensures that detainees have access legal information, including an on-site law library.

- (9) **Visitations:** This section ensures detainees can meet privately with legal representatives, and other legal support staff a minimum of 8 hours per day on business days and 4 hours per day on weekends. Detainees have the right to reasonable access to visits with individuals who address religious, cultural, or spiritual needs.
- (10) **Recreational Programs and Activities:** Detainees shall be afforded access to at least one hour each day of indoor and outdoor recreational programs and activities.
- (11) **Training of Personnel:** This section requires that all personnel in detention facilities and short-term detention facilities receive comprehensive training.
- (12) **Transportation:** The Secretary shall ensure the safe transport and deportation of each individual detained.
- (13) **Specific Detention Requirements for Short Term Detention Facilities:** This section requires that detainees in short term facilities receive water, food, toiletries, access to bathrooms, and other protections. The section provides additional protections for children.
- (14) **Vulnerable Populations:** This section requires that detention facilities accommodate the unique needs of vulnerable populations.
- (15) **Children:** This section requires the Secretary to separate children from adults who are not immediate relatives and, in particular, detainees who may endanger their safety.

(b) Rulemaking and Enforcement: Requires the Secretary to issue notice of proposed rulemaking regarding enforcement within 60 days of enactment. Within 180 days of enactment, the Secretary shall promulgate regulations, binding upon all facilities. Each detainee has the right to file grievances with DHS. This subsection also defines when judicial review may be sought and precludes punitive damages.

(c) Detention Commission: This section requires the Secretary to appoint and convene a detention commission comprised of government officials and independent expert to investigate, evaluate, and report to Congress on compliance.

(d) Death in Custody Reporting Requirement: This section requires the Secretary to report any detainee death to the DHS Office of the Inspector General and the Department of Justice within 48 hours of receiving the report of such death. Requires the Secretary to issue annual reports of all deaths in detention facilities.

# PROTECT CITIZENS AND RESIDENTS FROM UNLAWFUL DETENTION ACT

## Section by Section Summary

*Prepared by Human Rights First and Lutheran Immigration and Refugee Service*

### Section 1. SHORT TITLE.

### Section 2. FINDINGS.

*This section makes the following findings: 1) that ICE has mistakenly detained and deported US citizens and lawful permanent residents (LPRs); 2) mistaken identities, bureaucratic mix-ups, and discriminatory attitudes contribute to unconstitutional actions against US citizens, LPRs, and others with legal immigration status; 3) US citizens and LPRs should not be mistakenly or unlawfully detained, deported, or mistreated by government agents; and 4) No one should be subject to government actions that overstep basic protections or constitutional rights.*

### Section 3. DEFINITIONS.

*This section defines the terms: “Detention”, “Detention Facility”, “Immigration-Related Enforcement Activities” and “Secure Alternatives Programs”.*

### Section 4. PROTECTIONS AGAINST UNLAWFUL DETENTIONS OF UNITED STATES CITIZENS.

*This section outlines steps DHS must undertake to ensure that citizens and legal permanent residents are protected in case they are detained on the basis of a suspected immigration violation during an immigration-related enforcement activity.*

(a) Notification: Prior to questioning, ICE officers must advise individuals of the right to be represented at no expense to the Federal Government and that he or she may choose to remain silent and that any statement may be used against him or her in a subsequent removal or criminal proceeding. Any evidence obtained by the government from an individual in violation of these requirements shall be inadmissible in the government’s case in chief in any removal proceeding.

(b) Access to Counsel: An individual who is detained during an immigration-related enforcement activity may be represented by legal counsel at anytime. This includes during interviews, processing appointments, booking or intake questions, hearings, and any procedure which may result in a conclusion that the individual will be detained or removed from the US (amends INA §236 to reflect this requirement). At the time of detention of an individual for an immigration violation, ICE officers shall provide the individual with a list of free or low cost legal service organizations near the location of arrest. The official shall certify on the Notice to Appear that such a list was provided to the individual.

(c) Notice and Charges: Within 48 hours of detention, DHS must file the Notice to Appear (NTA) or other relevant charging document with the closest immigration court to where the individual was apprehended (amends INA § 236 to reflect this requirement). Requires DHS to grant a custody determination hearing (for an individual held more than 48 hours) within 72 hours of detention, unless waived within 7 days by an individual who enters into a written agreement with DHS to waive the requirement and is eligible for immigration benefits or demonstrates eligibility for a defense against removal (amends INA § 236 to reflect this requirement).

(d) Issuance of Detainers: DHS officials shall not issue a detainer in any context unless the official attests under oath that it has confirmed through lawfully obtained evidence that the individual who is the subject of the detainer is not a US

citizen and the information collected regarding the individual's alienage on the detainer is correct. The DHS officer shall serve each detainer issued on the individual who is the subject of the detainer. The Secretary of Homeland Security shall issue regulations requiring DHS officials to confirm an individual's alienage before issuing a detainer by confirming the individual's name, date of birth, fingerprints or other identifying information solely by information obtained lawfully.

(e) Access to Telephones: Requires DHS officials to provide individuals with free access to a phone for a telephone call no later than 6 hours after the individual's detention. DHS shall provide individuals access to a telephone to make free calls to his/her consulate, designated free legal service providers and nongovernmental organizations or legal representatives who are representing the individual pro bono, ICE offices, Immigration Courts, the BIA, the DHS Office of the Inspector General, the DHS Office for Civil Rights and Civil Liberties, and Federal and State courts where they detainee is or may become involved in a legal proceeding. Confidential calls shall be provided to detainees who are subject to expedited removal and or who are experiencing personal or family emergencies, including the need to arrange care for dependents. Detainees shall be provided access to make additional confidential calls at no expense to the government.

(f) Protection of Community-Based Organizations, Faith-Based Organizations, and Other Institutions: Requires the Secretary of Homeland Security to issue regulations requiring DHS officials to prohibit the apprehension of persons on the premises or in the immediate vicinity of child car providers, schools, legal service providers, federal or state courts and administrative proceedings, funeral homes, cemeteries, colleges, universities, community colleges, victims services agencies, social service agencies, hospitals and emergency care centers, health care clinics, and places of worship. Such regulations shall require DHS officials tightly control investigative operations at the above places.

(g) Transfer of Detainees: Requires the DHS Secretary to issue regulations on procedures governing the transfer of detained individuals that would give substantial weight to: access to legal representation; detainees residence prior to apprehension; location of family members; stage of any legal proceedings involving the detainee including federal, state or administrative proceedings, the proximity of transferee facility to the venue of any proceedings; detainee health and medical fitness; and whether the detainee has a pending USCIS or EOIR application.

DHS officers must provide detainees with at least 72 hours notice in the language spoken by the detainee and to the representative of record before transferring the detainee to another facility unless exigent circumstances dictate an immediate transfer. DHS shall not transfer any detainees until he or she has received any custody hearing for which he or she is eligible.

DHS may not transfer a detainee who has an existing attorney-client relationship to another facility if such transfer will impair the existing client-attorney relationship or the transfer would prejudice the rights of the detainee in any legal proceedings, absent exigent circumstances such as a natural disaster or comparable emergency.

To protect detainees' legal rights, the legal precedent in the location of apprehension shall control custody, bond and removal decisions. In cases of ambiguity, Immigration Judges must use the rule of lenity in choosing amongst the laws of the relevant circuits. In cases in which a detainee is transferred, the Secretary is required to make a record of the reasons and circumstances necessitating such transfer, including actions taken to ameliorate any adverse effect on the detainee's legal rights. Allegations of retaliations will undergo an independent investigation.

(h) Training: Requires the DHS Secretary in consultation with the DHS Office for Civil Rights and Civil Liberties to provide DHS officers, other federal agencies, and all State and local officers involved in immigration enforcement activities with periodic training on immigration law, civil rights, medical and mental health needs and treatment, due

process protections, and humanitarian guidelines under current law, including the right to access immigration legal counsel and the appropriate treatment of vulnerable populations.

### **Section 5. Basic Protections for Vulnerable Populations.**

*This section outlines measures DHS should take to identify and protect vulnerable populations. This section sets forth criteria for the release of individuals from detention. This section establishes secure alternatives programs that ensure appearances at immigration proceedings once they are released from physical detention.*

(a) Protection of Vulnerable Populations: Requires DHS screen each detainee within 72 hours of the commencement of an immigration-related enforcement activity to determine if the individual belongs to a vulnerable population group.

Vulnerable populations include individuals who: have serious medical or mental health needs, are pregnant or nursing, are detained with their children, are under 18 or over 65 years of age, are the victims of abuse or human trafficking, asylum seekers, torture survivors, individuals who have non-frivolous claims to U.S. citizenship, individuals who are eligible for relief under the Immigration and Nationality Act, and other groups designated in regulations or guidance promulgated by the Secretary of Homeland Security.

(b) Options Regarding Detention Decisions for Vulnerable Populations: Provides for the Secretary of Homeland Security or the Attorney General to release a detained individual on bond, conditional parole, on the individual's own recognizance, or to enroll the individual into a secure alternatives program. The Secretary or Attorney General shall make the decision to detain based upon whether the alien poses a risk to public safety, including a risk to national security, or whether there are no conditions of release that will reasonably assure that the alien will appear for immigration proceedings. (amends INA §236 to reflect this requirement).

Requires that DHS release individuals who are found to be a member of a vulnerable population (as defined by subsection (a)) and that DHS not subject the individual to electronic monitoring unless the Department demonstrates by preponderance of evidence that the individual is subject to mandatory custody or mandatory detention under INA 236A or INA 236(d) or poses a risk to U.S. national security, or is a flight risk and the risk cannot be mitigated through supervision in a non-custodial secure alternatives program. Vulnerable populations eligible for release under this section shall be released on their own recognizance, on bond, on parole in accordance with section 212(d)(5)(A), or into a secure alternatives program. (amends INA §236 to reflect this requirement).

Any decision under this paragraph shall be made in writing to specify the reasons for such decision if the decision is made to continue to detention without bond or parole and shall be served upon the individual in the language spoken by the individual not later than 72 hours after the commencement of the alien's detention or not later than 72 hours after a positive credible fear or reasonable fear of torture determination. Any alien detained under this section may request a redetermination of the decision by an immigration judge. All custody decisions by the Secretary shall be subject to redetermination by an immigration judge. (amends INA §236 to reflect this requirement).

(c) Secure Alternatives Programs. Requires the Secretary of Homeland Security to establish secure alternatives program (as defined by section 3 of this act). Authorizes the Secretary to use secure alternatives for any individual who is subject to detention under the INA excluding those subject to detention under INA 236A. If an individual is determined to not meet the requirements for release on recognizance, bond, parole, or placement in non-custodial secure alternatives, DHS shall consider the alien for placement into a secure custodial alternatives program, including but not limited to the use of electronic ankle bracelets. DHS shall review the decision to enroll an individual into a secure custodial alternatives program on a monthly basis. To implement these programs, the Secretary shall contract with nongovernmental

organizations to conduct screenings of detainees, provide appearance assistance services, or to operate group homes or other community-based supervision programs.

**Section 8. REPORT ON PROTECTIONS FOR UNITED STATES CITIZENS, NATIONALS, AND LAWFUL PERMANENT RESIDENTS FROM UNLAWFUL DETENTION.**

*This section requires the DHS Secretary to submit annual reports to Congress describing the impact of worksite operations and fugitive operations on United States citizens, lawful permanent residents and other lawfully present individuals.*

The report should include: the number of individuals detained during immigration-related enforcement operations who are children, US citizens, or adult lawful permanent residents; information regarding immigration-related arrests made at homes, schools, places of worship, medical care facilities, victim service agencies, social service agencies, and community centers; arrests, detentions and removals of sole caregivers, primary breadwinners, pregnant and nursing mothers, and other vulnerable groups during an immigration-related enforcement activity; information about transfers of immigrants during the course of a raid or immigration enforcement activity, collateral arrests and worksite enforcement initiatives; whether individuals detained in an immigration-related enforcement activity are notified about their right to counsel; use of excessive force by ICE agents; whether ICE enters private homes or residents without a search warrant or consent; whether ICE uses or displays weapons during immigration enforcement activities or interrogations; ICE's cooperation with State and local law enforcement during an immigration enforcement activity; whether ICE identifies themselves when entering a location for enforcement purposes; the conditions of confinement; whether detainees are provided access to the telephone; whether confined individuals are notified of their rights in a language they can understand; whether individuals detained were forced or coerced to sign any documents or waive any rights without consulting with an attorney; the methodology of DHS for notifying agents about humanitarian standards regarding enforcement actions and holding them accountable when such standards are violated; an analysis of how much each raid of more than 50 people costs per individual; the number of ICE agents disciplined for violations in detention proceedings; and recommendations for improving worksite and fugitive operations. Authorizes necessary appropriations.

**Section 9. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.**

*This section proposes the creation of the position "Immigration and Customs Enforcement Ombudsman" and outlines the duties and responsibilities of the position.*

(a) **In General:** Amends the Homeland Security Act of 2002 by adding a section creating the position of "Immigration and Customs Enforcement Ombudsman." The Ombudsman shall report directly to the Assistant Secretary for Immigration and Customs Enforcement.

(b) **Functions:** Functions of the Ombudsman include: conducting regular and unannounced inspections of detention facilities to determine compliance with relevant policies, procedures, standards, laws and regulations and reporting all findings to the DHS Secretary and Assistant Secretary.

Functions also include: developing procedures for detainees to submit confidential written complaints directly to the Ombudsman; investigating and resolving all complaints related to decisions, recommendations, acts or omissions made by the Assistant Secretary or CBP Commissioner in the course of custody and detention operations; initiating investigations into allegations of systemic problems at detention facilities; conducting any reviews or audits relating to detention; referring matters where appropriate to the relevant office or agency; and proposing changes in ICE policies or practices to improve treatment of individuals encountered in immigration-related enforcement operations.

Functions also include: establishing a public advisory group composed of government and non-governmental experts on detention and vulnerable populations to provide private sector input into the priorities of the Ombudsman, reviewing current ICE practices, and recommending personnel action based on any finding of noncompliance to be considered by the Assistant Secretary.

(c) Annual Report: Requires the Ombudsman to submit a yearly report not later than June 30<sup>th</sup> of each calendar year to both the House and Senate Committees on the Judiciary on the objectives of the Office of the Ombudsman.

The report must include: a full and substantive analysis of the objectives of the office and statistical information regarding such objectives.

The report must also include: a description of each detention facility found to be in non-compliance with DHS detention standards or other applicable regulations; a description of actions taken by DHS to remedy findings on non-compliance and information regarding whether those actions were successful and resulted in compliance; and a summary of the most pervasive and serious problems encountered by individuals affected by DHS enforcement operations.

#### **Section 10. RULEMAKING.**

The DHS Secretary shall promulgate regulations to implement this Act and amendments within one year of enactment.

## SECURE AND SAFE DETENTION AND ASYLUM ACT

*Section by Section Summary by the*

*American Civil Liberties Union Washington Legislative Office.*

*Although federal immigration authorities adopted generalized detention standards in 2000 and recently issued performance-based detention standards, immigration detention standards have not been consistently implemented and are not legally enforceable. As a result, conditions of confinement for immigration detainees vary drastically across detention facilities and have drawn strong criticism by immigration advocates and human rights organizations, especially because of their harsh impact on immigrants fleeing persecution, families with minor children, victims of abuse and immigrants with serious medical problems.*

*This bill sets out critical standards to ensure that all detainees are treated fairly and humanely while in the custody of the Department of Homeland Security (DHS) and requires DHS to promulgate rules implementing the standards. The bill creates a new Office of Detention Oversight to review and investigate any violations of detention standards. The bill expands critical due process protections for all detained aliens, including prompt written notice and explanation of their detention, the right to contest their detention before an immigration judge, and interpretation services to ensure that aliens understand any statements they sign in the context of removal proceedings. This bill also expands detainees' access to legal counsel through the Legal Orientation Program. The bill creates and expands alternatives to detention programs, enhances release options for detainees who do not pose security or flight risks, and creates secure, less-restrictive detention options for vulnerable immigrants who must be detained. The bill also creates special, separate facilities for families with minor children.*

### **Section 1. SHORT TITLE.**

### **Section 2. DEFINITIONS.**

*This section defines the terms 'Asylum Seeker', 'Credible Fear Determination', 'Department', 'Detainee', 'Detention Facility', 'Reasonable Fear of Persecution or Torture', 'Secretary', 'Standard' and 'Vulnerable Populations.'*

Vulnerable populations. The statute defines vulnerable populations to include those aliens who have experienced, or are at risk of, abuse or mistreatment, including: Asylum seekers, refugees, aliens who have been granted withholding of removal or have been granted or are seeking relief under the Convention Against Torture, victims of trafficking, victims of violence seeking relief through U visas, victims of domestic violence seeking protection under the Violence Against Women Act, unaccompanied minors, families with children and detainees with serious medical or mental health needs.

### **Section 3. PROCEDURES FOR ENSURING ACCURACY AND VERIFIABILITY OF SWORN STATEMENTS TAKEN PURSUANT TO EXPEDITED REMOVAL AUTHORITY**

*This section sets out procedures that DHS must follow to ensure the accuracy and verifiability of signed or sworn statements taken to facilitate expedited removal of aliens.*

(a) In General – Requires DHS to establish procedures assuring the accuracy and verifiability of signed or sworn statements taken by DHS in expedited removal procedures under section 235(b) of the INA.

(b) Recording of Interviews – DHS must make a recording of any interview that serves as the basis for any signed or sworn statements.

(c) Recordings – Recordings must be made in a reliable format, such as video or audio, and must include a written statement being read back in its entirety to the alien in a language that the alien understands, and must include the alien affirming the statement's content or making any corrections.

(d) Exemption Authority – DHS may exempt any facility from the recording requirements in section (b) and (c) if compliance would impair operations at the facility or impose undue burdens or costs. DHS must make a yearly report to Congress about which facilities have been exempted from the recording requirements. Exercising exemption authority shall not give rise to a private cause of action.

(e) Interpreters – If the interviewing officer does not speak a language the alien understands, DHS must provide a professional fluent interpreter if no available government employee can translate effectively, accurately and impartially,

(f) Recordings in Immigration Proceedings – Recordings must be included in the record and can be used as evidence in future proceedings.

#### **Section 4. PROCEDURES GOVERNING DETENTION DECISIONS**

*This section amends section 236 of the Immigration and Nationality Act to set out procedures governing custody decisions, custody redeterminations, release and administrative review.*

- This section transfers decision making authority about detention from the Attorney General to the Secretary of the Department of Homeland Security and adds two new statutory conditions for release: 'the alien's own recognizance or a secure alternatives program.'
- Custody Decisions. Within 48 hours of detention, DHS must serve aliens with written notification of the decision to detain them. Inadmissible arriving aliens referred for a hearing must be served with written notification of the decision to detain them within 48 hours of any positive determination of the alien's credible fear of persecution or reasonable fear of persecution or torture. The criteria DHS must use to make a detention determination includes: whether the alien poses a risk to public safety or national security; whether the alien poses a flight risk; any other humanitarian reasons that may warrant the alien's release.
- Custody Redeterminations. An immigration judge must review detention determinations within two weeks of issuance, unless the detainee waives the two week requirement. Detainees may request a redetermination of their detention decisions by an immigration judge at any time. Detainees can request additional redeterminations if they can show a material change in their circumstances. Aliens subject to mandatory detention under the INA are entitled to notice and explanation of their detention but are not entitled to request custody determinations.<sup>1</sup>
- Release. This section gives DHS discretion to release aliens who are inadmissible for committing criminal offenses under section 212(a)2 or 212(a)3(B), or deportable for committing offenses under 237(a)(2)(A). If DHS determines that an otherwise inadmissible alien does not pose a flight risk or public safety risk, and that his/her

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<sup>1</sup> Aliens subject to mandatory detention under the INA include: Aliens ordered removed pursuant to a final determination of no credible fear of persecution, INA § 235(b)(1)(B)(IV); aliens who have been ordered removed and found inadmissible or deportable under criminal or terrorism grounds, INA § 241(a)(2), § 236(c) and § 236A.

release is necessary to protect a witness, a potential witness, a person cooperating with a major criminal investigation or an immediate family member of a witness or person cooperating with a major criminal investigation, or for humanitarian reasons, DHS may release the alien. DHS has discretion to consider the severity of the alien's crime.

- Administrative Review. If DHS issues a stay against an immigration judge's custody decision pending an appeal of that decision, the stay will expire after thirty days unless the Bureau of Immigration Appeals (BIA) orders a continuation of that stay. The BIA must adjudicate a bond hearing within or the stay will expire after 90 days.

## **Section 5. LEGAL ORIENTATION PROGRAM**

*This section expands the legal orientation program for detainees in immigration and asylum proceedings.*

(a) DHS and the Department of Justice to ensure that all detained aliens in immigration and asylum proceedings receive legal orientation through the existing EOIR program.

(b) USCIS must expand existing pro-bono legal counseling and assistance programs for asylum seekers, such as the pilot program in Arlington, VA.

## **Section 6. CONDITIONS OF DETENTION**

*This section sets out minimum standards for detention conditions that DHS must implement.*

(a) DHS must ensure that all detention facilities comply with the following minimum standards:

- 1) Detainees must be treated fairly and humanely. Degrading and inhumane treatment, such as physical abuse, sexual abuse, harassment or arbitrary punishment, is prohibited.
- 2) Solitary confinement, shackling and strip searches may only be used if such techniques are necessary to ensure the safety of other detainees, staff or the public, and only if less coercive measures will not work. Detainees may not be placed in solitary confinement except in exceptional circumstances. Decisions to use solitary confinement must be regularly reviewed.
- 3) Detainees' grievances must receive prompt, impartial and effective investigation.
- 4) Detainees must have access to telephones and be able to make [confidential?] toll-free calls to legal representatives, foreign consulates, immigration courts, the Board of Immigration Appeals and the Federal Courts.
- 5) Detention facilities must be located near free or low cost immigration legal representatives with immigration and asylum law expertise, whenever possible.
- 6) Detainee transfer procedures must consider detainee's access to legal representation and the facility's proximity to the venue of the detainee's removal or asylum case.
- 7) Detention facilities must hire staff who speak languages in the population of detainees at the facility, or provide alternative interpreter and translation services
- 8) Detainees must have daily access to indoor and outdoor recreation.
- 9) Detention conditions and procedures must be appropriate for noncriminal, nonviolent detainees and those detainees must not be housed with detainees with felony convictions or violent criminal histories.
- 10) Detention conditions and procedures must accommodate unique needs of vulnerable populations, including: asylum seekers, victims of torture or trafficking, families with children, non-English speakers, and detainees with special religious, cultural or spiritual considerations.

(b) Rulemaking. This section requires DHS to prescribe regulations under a negotiated rulemaking procedure to ensure compliance with the minimum standards in section (a). Any negotiated rulemaking committee must include representatives from: DHS, Office of Refugee Resettlement, state and local governments that have entered into agreements with DHS to detain aliens; US Commission on Interreligious Freedom; NGOs with expertise advocating for detainees, especially vulnerable populations, and expertise advocating for asylum seekers; organizations representing detention facility employees; and accrediting bodies for medical care in detention facilities, or other experts in the provision of medical care in such settings. Any recommendations with respect to proposed regulations must be made to DHS within 9 months, and DHS must promulgate a final rule within 18 months.

(c) Medical Care. Detainees must receive prompt and adequate emergency, primary and specialty medical care at no cost. Medical care must include vision, dental, mental health care, individual and group counseling, and special dietary needs. Medical care procedures must include: comprehensive intake screening, continuity of care, prompt response to detainees' requests for care or treatment and accurate and timely distribution of medications.

Detention medical facilities must be accredited by the National Commission on Correctional Health Care. Facilities must maintain complete medical records and make records available to detainees, their legal representatives or other authorized individuals upon request.

(d) Training. Detention facility staff must be trained to better understand and work with vulnerable populations, detainees from different countries and detainees who cannot speak English. Training should address the unique needs of asylum seekers and victims of trauma and torture, and should emphasize that many immigration detainees are held for civil, nonviolent offenses and have no criminal records.

## **Section 7. OFFICE OF DETENTION OVERSIGHT**

*This section establishes an Office of Detention Oversight within DHS to monitor detention facilities, investigate complaints and allegations of violations and abuse and report to other law enforcement bodies.*

(a) DHS must establish an Office of Detention Oversight and appoint an administrator to head it within 180 days.

(b) The Office of Detention Oversight (ODO) must make frequent, unannounced visits to detention facilities; develop procedures for detainees and their representatives to file written complaint directly to the ODO, and report to ICE and DHS any facilities not complying with detention standards and any other applicable laws. The ODO must investigate any allegations of systemic problems and violations at detention facilities and must report its findings to ICE and DHS. When appropriate, the ODO must make referrals for further investigation to the Department of Justice, DHS Office of Inspector General (OIG), the DHS Office of Civil Rights and Civil Liberties, and any other relevant office or agency. The ODO must make annual reports on detention conditions and investigations to DHS, the Senate Committees on Judiciary and Homeland Security and Governmental Affairs, and to the House Committees on Judiciary and Homeland Security. The report must describe: each facility found to be noncompliant, actions taken to remedy facilities' noncompliance, and information on the success of such actions.

The ODO must also establish procedures to receive and review complaints about detention conditions, and must protect claimants' anonymity from retaliation.

(c) The ODO must cooperate and coordinate with the DHS Office of the Inspector General, with the DHS Office of Civil Rights and Civil Liberties, with the DHS Privacy Offices and the DOJ Civil Rights Division.

(d) DHS must ensure that all detainee deaths are reported in a timely manner, including: detainees or aliens who die DHS custody and all deaths related to ICE or CBP operations or actions. Deaths must be reported to: the ODO, the DHS Office of Inspector General, immediate relatives of the deceased, if DHS has their contact information, legal representatives of the deceased, if DHS is on notice that the detainee had counsel, to relevant state and local officials, including county coroners and sheriffs, to the Senate Committees on Judiciary and Homeland Security and Governmental Affairs, and to the House Committees on Judiciary and Homeland Security. The ODO and OIG must conduct thorough investigations of all deaths and must make reports describing the results to DHS, to the Senate Committees on Judiciary and Homeland Security and Governmental Affairs, and to the House Committees on Judiciary and Homeland Security.

## **Section 8. SECURE ALTERNATIVES PROGRAM**

*This section establishes, and sets out requirements for, an alternative program in which detainees can be released from detention under supervision.*

(a) DHS must establish a secure alternative program for detainees to be released under enhanced supervision.

(b) This section sets out requirements for the secure alternatives program:

- 1) The program must be nationwide.
- 2) The program must provide a continuum of alternative, which may include placement with a relative or an organizational sponsor, or placement in a supervised group home.
- 3) The program must include individualized case management and referral to community-based legal and social service organizations.
- 4) Restrictive electronic monitoring devices may only be used when there is “demonstrated need”, and decisions to use them must be periodically reviewed.
- 5) Aliens who would be otherwise detained based on release criteria in INA § 236(b)2 (as amended by Section 4 of this Act) or those who are released subject to INA § 236(e)(2) (as amended by Section 4 of this Act) will be considered for the secure alternatives program. The population in the program will receive sufficient supervision.
- 6) DHS will contract with qualified NGOs to run the secure alternatives program.
- 7) DHS will consult relevant experts and consider alternative programs that have been successful in the past.

## **Section 9. LESS RESTRICTIVE DETENTION FACILITIES**

*This section lays out requirements for less restrictive detention facilities to house vulnerable populations, and sets out special standards for housing families with minor children.*

(a) DHS must build and facilitate the use of, secure, less restrictive detention facilities.

(b) Detainees in the less restrictive facilities must have: minimally restricted movement within and between indoor and outdoor areas; ready access to social, psychological and medical services; specialized services for detainees with special needs, including those who have survived trauma or torture; programs and recreation, with a full range of daily varied activities and classes; contact visits with family members and legal representatives. Facility staff must be trained to address needs of vulnerable populations. Shackles or handcuffs may not be used within the facility, and solitary confinement and isolation may not be used as a punishment.

(c) In making placement decisions for less restrictive facilities, DHS must consider whether detainees are members of a vulnerable population or nonviolent, non-criminals.

(d) Families with minor children must not be detained except when detention is required pursuant to expedited removal under INA § 235(b)(1)(B)(iii), or “exceptional circumstances”. When a secure alternatives program or release is not an option, DHS must design special facilities to house parents with minor children. The facilities must have appropriate procedures and conditions and must be managed by entities with expertise in child welfare. There must be monthly review of each family’s well being and need for continued detention.

e) This section amends INA § 235(b)(1)(B)(iii), DHS discretionary authority to not detain families with minor children for humanitarian reasons.

f) DHS must issue necessary regulations to implement this section.

### **Section 10. NEW SECTION: STUDY ON THE EFFECT OF EXPEDITED REMOVAL PRACTICES AND PROCEDURES ON ASYLUM CLAIMS**

*This section authorizes a study of the impact of expedited removal on asylum claims.*

(a) This section authorizes the U.S. Commission on International Religious Freedom to conduct a study on whether immigration officers improperly encourage aliens to withdraw or retract asylum claims, fail to refer aliens to asylum officers for interview to determine whether they have a credible fear of persecution, incorrectly remove aliens to countries where they may be persecuted or detain aliens improperly or in inappropriate conditions.

b) Within 18 months the Commission must issue a report on the results of its study to the Senate Committees on Homeland Security and Governmental Affairs, Judiciary, and Foreign Relations, and to the House Committees on Judiciary, Homeland Security and Foreign Affairs.

c) At the Commission’s request, DHS and DOJ will designate refugee and asylum experts to assist the Commission in its study. The Commission can hire additional staff and consultants. Commission staff will have unrestricted access to all stages of all immigration removal proceedings unless the alien in the proceedings objects, or unless DHS determines that the security of a particular proceeding would be threatened.

### **Section 11. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE**

*This section authorizes appropriations as needed to carry out the Act. The Act will go into effect 180 days after its enactment.*

## **Rep. Roybal-Allard's Immigration Oversight and Fairness Act of 2009 (H.R. 1215)**

*Section by Section Summary by the  
American Immigration Lawyers Association and Lutheran Immigration and Refugee Service*

*Although federal immigration authorities adopted generalized detention standards in 2000 and recently issued performance-based detention standards, the immigration detention standards have not been consistently implemented and they are not legally enforceable. As a result, conditions of confinement for immigration detainees vary drastically across detention facilities and have drawn harsh criticism by immigration advocates and human rights organizations. This bill would ensure that the Department of Homeland Security's own detention standards for the treatment of immigrant detainees are followed by: (a) imposing certain critical standards by statute and (b) requiring rulemaking that would improve the standards. The bill also creates and expands alternatives to detention programs and enhances release and parole options for vulnerable populations such as pregnant women and children. In addition, the bill includes provisions to ensure that Unaccompanied Alien Children (UAC) are treated fairly and humanely while in the custody of the Department of Homeland Security (DHS) and that they are transferred safely and in a timely manner to the Office of Refugee Resettlement (ORR).*

The bill includes the following provisions:

### **Section 1. Short Title.**

### **Section 2. Enhanced Protections for Vulnerable Unaccompanied Alien Children and Female Detainees.**

*This section outlines steps DHS must undertake to ensure that Unaccompanied Alien Children (UAC) are treated fairly and humanely while in the custody of DHS and that they are transferred safely and in a timely manner to the Office of Refugee Resettlement (ORR). The section also requires DHS to establish policies governing age determinations of children, safe repatriation to home countries, and protections for those at risk if returned.*

(a) **Mandatory Training:** DHS, in consultation with ORR and independent experts, shall provide training of all personnel who come into contact with UACs on relevant laws, policy, and procedures pertaining to this vulnerable population.

(b) **Care and Transportation:** DHS shall transfer all UACs in immigration court proceedings to the care and legal and physical custody of ORR within 24 hours of apprehension, except in narrowly defined exceptional circumstances beyond DHS's or ORR's control such as a natural disaster or comparable emergency.

(c) **Qualified Resources:** At each major Port of Entry, DHS must provide adequately trained and qualified staff, including CBP agents charged primarily with safe and humane transportation of UACs to ORR custody. DHS must provide independent licensed social workers to ensure the proper care of children while in DHS custody, including provision of emergency medical care; mental health care in case of trauma and access to psychosocial health services; a bed and sufficient bed linens; adequate nutrition; a safe and sanitary living environment; educational materials; and access to at least three hours per day of indoor and outdoor recreational programs and activities.

(d) **Notification:** To facilitate safe transfers of children to ORR custody, this section requires DHS to notify ORR immediately upon DHS taking custody of a UAC.

(e) **Notice of Rights and Access to Counsel:** DHS must ensure all UACs in its custody are provided with both a video and written and oral orientation of their basic rights, including the rights to relief from removal, their right to confer with

counsel and family, and the availability of complaint mechanisms for them to report abuse or misconduct. The DHS Secretary shall ensure that the video orientation and written notice of rights is available in English and in the five most common native languages spoken by the unaccompanied children held in custody at that location during the preceding fiscal year, and that the oral notice of rights is available in English and in the most common native language spoken by the unaccompanied children held in custody at that location during the preceding fiscal year.

(f) Confidentiality: The Secretary of HHS shall maintain the privacy and confidentiality of all information gathered in the course of providing care, custody, placement and follow-up services to unaccompanied alien children, consistent with the best interest of an unaccompanied alien child, by not disclosing such information to other government agencies or nonparental third parties. HHS may share information when authorized to do so by the child and when consistent with the child's best interest. HHS may provide information to a duly recognized law enforcement entity, if such disclosure would prevent imminent and serious harm to another individual. All disclosures shall be duly recorded in writing and placed in the child's files.

(g) Other Policies and Procedures: This section requires DHS to develop policies and procedures 1) to improve the age-determination process for children; 2) to ensure children are repatriated safely to their home countries through programs developed in consultation with the Department of State and ORR; 3) to utilize all legal authorities to defer removal for children at clear risk of life-threatening harm if returned and 4) to ensure that unaccompanied alien children are physically separated from any adult who is not an immediate family member and are separated by sight and sound from immigration detainees and inmates with criminal convictions, pretrial inmates facing criminal prosecution, children who have been adjudicated delinquents or convicted of adult offenses and/or are pending delinquency or criminal proceedings, and those inmates exhibiting violent behavior while in detention as is consistent with the Juvenile Justice and Delinquency Prevention Act.

### **Section 3. Detention Conditions.**

*This section would ensure that the Department of Homeland Security's own detention standards for the treatment of immigrant detainees are followed by: (a) imposing certain critical standards by statute and then (b) requiring rulemaking that would improve the standards. The rulemaking would be based on the report of a detention advisory committee composed of government and non-governmental experts.*

#### (a) DETENTION REQUIREMENTS:

All detention facilities shall fully comply with the following minimum requirements:

##### (1) ACCESS TO TELEPHONES:

- Detention facilities shall provide reasonable and equitable access to working telephones during detention facility working hours and on an emergency basis and the ability to contact free of charge, legal representatives, foreign consulates, the immigration courts, the Board of Immigration Appeals, the Federal courts, and all others who are contacted for the purpose of obtaining legal representation.
- Detention facilities shall provide detainees with copies of rules governing phone access in appropriate languages and oral interpretation or written translation assistance so that detainees may read any relevant materials related to telephone access.
- Detention facilities shall ensure that telephone rates are reasonable and equitable and shall not significantly impair the detainees' access to telephones.
- Detention facilities shall make a reasonable number of working phones available to detainees and, at a minimum, one phone per each 25 users.

- Detention facilities shall place no restriction on number or frequency of calls to legal counsel.
- Detention facilities shall ensure detainee's telephone calls to a court, legal representative or consular official shall not be monitored or recorded without a court order and without prior notification to the detainee.
- Detention facilities shall take and deliver telephone messages to detainees no less than twice a day, and permit detainees to return calls confidentially within 8 hours of receipt of a message left by legal counsel or a consular official.

(2) QUALITY OF MEDICAL CARE:

- Detention facilities shall provide a continuum of high-quality medical care, including care for medical needs that existed prior to detention. Such medical care shall address all detainee health needs and shall include chronic care, dental care, eye care, mental health care, individual and group counseling, medical dietary needs, and other medically necessary specialized care.
- All detention facilities shall maintain current health care accreditations by the National Commission on Correctional Health Care and the Joint Commission on the Accreditation of Health Care Organizations. Detention facilities must be accredited within a specified timeframe or DHS shall cease use of the facility.
- All detention facilities shall have a designed on-site health authority to treat detainees and clinical decisions shall be made solely by a licensed health care provider.
- Each detainee shall receive a comprehensive medical and mental health intake screening by a qualified health care professional upon arrival and each detainee shall receive a comprehensive medical and mental health examination by a health care professional not later than 14 days after arrival.
- Any decision to deny requested medical care or treatment recommended by any outside physician or specialist shall be made within 72 hours or earlier if medically necessary and shall be accompanied by a written explanation of the reasons for the denial. DHS shall communicate in writing to the detainee and DHS Secretary any denial of requested treatment. Detainees shall be afforded an opportunity to appeal any decisions denying a request for medical treatment. Such an appeal or request for reconsideration shall be resolved in writing within 7 days or earlier if medically necessary by an appeals board that shall be composed of independent health care professionals in the fields relevant to the request for medical or mental health care. The written decision shall be conveyed to the on-site medical provider and the immigration detainee within 24 hours of a decision by the appeals board.
- Except in emergency situations where informed consent cannot be obtained, medical care shall only be provided with the informed consent of the detainee.
- Involuntary psychotropic medication may only be used in certain emergency situations, and must be disclosed to the detainee's counsel. If a detainee is not represented by counsel, the administration of any psychotropic drug to the detainee shall be disclosed to the Immigration Court prior to any hearing in which the detainee will appear subject to confidentiality provisions. Any detainee who receives medication must be afforded a hearing before receiving medication again.
- Drugs shall not be administered to detainees without informed consent for the purpose of sedation or controlling the detainee's behavior during transport or removal or for punishment.
- Detention facilities shall maintain complete, confidential medical records for every detainee which shall be made available within 72 hours to any detention facility where the individual is transferred. Medical records shall be made available within 72 hours to the detainee or his or her representative. All records shall be treated confidentially as required by HIPPA.
- The DHS Secretary must report information on any in-custody detainee deaths to Congress semi-annually, and to the DHS Inspector General within 48 hours of any in-custody death. The report shall include basic information regarding the detainee; the date and location of the death; a brief description of the circumstances surrounding the death; the status and results of any investigation that has been conducted; the locations where the detainee had been held; and the medical records of the deceased.
- All detainee transfers shall take into consideration detainee health during transfer and ensure continuity of care without interruption including the provision of prescription medicines during and after transfer.

(3) SEXUAL ABUSE REGULATIONS CONCERNING CARE AND CUSTODY OF DETAINEES:

- Detention facilities shall take all necessary measures to prevent sexual abuse of detainees including sexual assaults and shall observe the minimum standards under the Prison Rape Elimination Act.
- Where sexual abuse occurs, detention facilities shall ensure that prompt and appropriate medical intervention is taken to minimize the medical and psychological trauma; a medical history is taken and a physical examination is conducted to determine the extent of injury and whether a transfer to a medical facility is required; prophylactic treatment, emergency contraception and follow-up for STDs is provided; the case is evaluated by a qualified mental health professional; victims are separated from their abusers and considered for parole or an alternatives to detention program; and any and all medical records are treated as confidential
- A detention facility shall not subject any person to punishment or retaliation for reporting incidences of sexual abuse.
- The facility shall conduct a thorough and timely investigation of all cases of alleged sexual abuse, and provide the DHS Secretary with a report of the circumstances and response of the facility. The report shall include a determination of whether the sexual abuse occurred; an analysis of the relevant facts and whether the abuse indicates a policy failure, lack of training or other factors; a description of the actions that the facility will take to prevent the occurrence of similar incidents; and a plan for monitoring implementation.

(4) TRANSFER:

- The DHS Secretary shall adopt procedures governing transfer of detainees giving primary consideration to the detainee's access to legal representation; ability to prepare a legal defense in immigration proceedings; legal venue of proceedings; and the impact on the detainee's health and medical fitness. The procedures shall give secondary consideration to the detainee's residence and the location of family members.
- Unless exigent circumstances dictate an immediate transfer is required, the DHS Secretary shall provide not less than 72 hours notice to any detainee prior to transferring the detainee to another detention facility. Detainees shall be afforded at least one toll-free call following any transfer. Within 24 hours after the detainee's arrival at the new facility, the DHS Secretary shall notify the detainee's legal representative or if unrepresented, an adult family member or other person designated by the detainee, of the transfer and the detainee's new location. If removal proceedings are pending, the DHS Secretary shall also promptly notify the relevant court of the transfer and the detainee's new address and DHS shall not transfer any detainee who has already requested, and is awaiting, a bond hearing.
- If the Secretary determines that a transfer is necessary due to a highly unusual emergency, the Secretary shall ensure that the detainee's legal rights are not prejudiced and the existing attorney-client relationship is not impaired, including evaluating the location of the detention facility based on its proximity to the detainee's counsel or non-governmental or pro bono organizations providing free or low cost immigration legal services.
- Detainees shall be afforded at least one toll-free call following any transfer. Within 24 hours after the detainee's arrival at the new facility, DHS shall notify the detainee's legal representative of the transfer and the detainee's new location. DHS shall notify the courts as appropriate regarding the transfer.

(5) NOTICE:

- The DHS Secretary must file and serve a Notice to Appear on the detainee and with the Immigration Court within 48 hours of detaining an alien and provide a custody determination hearing within 72 hours. The requirements of the provision may be tolled for no more than 30 days upon a written request from an alien who demonstrates eligibility for immigration relief. DHS shall document when the notice to appear is served on the detainee and submit to Congress a report regarding compliance with the requirement.

(b) REGULATIONS CONCERNING CARE AND CUSTODY OF DETAINEES

(1) RULE MAKING/DETENTION

- The DHS Secretary shall promulgate new rules or modify existing rules based on the report of a detention advisory committee to ensure detainees are treated humanely and held in the least restrictive setting necessary for their safety and to ensure compliance with the general minimum requirements set forth in this bill including the standards regarding classification of detainees and the special standards regarding the treatment of vulnerable populations. The rules must be promulgated within 1 year of receiving the report from the Detention Advisory Committee or within 1 year after the report is due, whichever date is earlier.

(2) DETENTION ADVISORY COMMITTEE

- The DHS Secretary shall convene and receive a report from a detention advisory committee composed of an equal number of government and agency officials and independent experts from nongovernmental and intergovernmental organizations with expertise in working on behalf of detainees and vulnerable populations. The committee shall include representatives from the American Bar Association and UNHCR. The committee shall review and revise all the guidelines found in the DHS Detention Operations Manual based on identifiable deficiencies and best practices that treat detainees both safely and humanely. The committee shall submit a report to the Secretary within 12 months after the date of enactment of this Act which may be extended for 6 months for good cause.

(3) TRAINING: The DHS Secretary shall develop and implement a training protocol for all personnel in all facilities in which noncitizens are detained. The training protocol shall include periodic updates to initial comprehensive training. The agency shall monitor the implementation of the protocol annually and shall ensure that all personnel who are required to be trained under the protocol have received the necessary training. The protocol shall include-(i) an overview of immigration detention and the characteristics of the noncitizen detainee population; (ii) an overview of the detention standards; (iii) specific guidance on each of the detention standards; (iv) a description of the agency's quality assurance procedures.

(4) GENERAL MINIMUM REQUIREMENTS: The Secretary's rules shall ensure that the following minimum requirements are met:

- Fair and Humane Treatment: Detainees shall not be subjected to cruel, degrading or inhumane treatment.
- Use of Force and Restraints: Detainees shall not be subjected to shackling, handcuffing, solitary confinement, Tasers, electric shields, restraint chairs, or strip searches unless and to the extent that such techniques are necessary to ensure the security of detainees, staff or the public and where no less coercive and degrading measures are available.
- Investigation of Grievances: Detainees have the right to prompt, effective, transparent and impartial grievance procedures. Such procedures shall include review of grievances by DHS officials who do not work at the same facility. An otherwise valid grievance shall not be denied for non-compliance with procedural requirements due to ignorance, fear, excusable neglect or other reasonable cause. Detainees shall be given the opportunity to complain to ICE directly and confidentially. Detainees shall not be subject to retaliation for making use of the grievance procedures. Detention facilities shall orally and in writing inform detainees about the grievance procedure and provide translation and interpretation assistance. Detention centers shall make an annual report to the DHS Secretary regarding the grievances. All grievances shall be investigated.
- Location of Facilities: Whenever practical, detention centers are be located within 50 miles of a city where there is a demonstrated capacity to provide competent legal representation by non-profit organizations or pro bono organizations. Sets a compliance goal of 2012.

- Access to Legal Materials: Detainees shall have access to an on-site law library including up-to-date copies of legal materials. The law library shall include equipment for legal research including computers, printers, typewriters and copiers. Information regarding use of the library shall be provided to detainees at the time of admission. DHS shall provide assistance to detainees who are not literate in English. Library services shall be provided free of charge.
- Legal Visits: Legal visits shall not be restricted absent narrowly defined exceptional circumstances, including a natural disaster or comparable emergency beyond the control of the DHS. Detainees are entitled to private meetings with their current or prospective legal representatives. Interpreters shall be permitted to accompany legal representatives during visits. Legal visits may be conducted during the work day including a minimum of 8 hours per day on regular business days and 4 hours per day on weekends and holidays. Detention facilities shall maintain a procedure allowing legal representatives to call ahead to determine if a detainee is held by the facility. Messengers shall be permitted to deliver documents to and from the facility. Detainees shall post the most current list of pro bono legal organizations and their contact information. Detention facilities may not retaliate in any way for complaints made by legal representatives regarding conditions of detention.
- Special correspondence: Special correspondence shall not be read by detention facility staff nor opened outside the presence of the detainee. Special correspondence includes written communications to private attorneys; officers of the court; consular officials; members of Congress; DOJ, DHS or public health personnel; the media; nongovernmental organizations (NGOs); intergovernmental organizations; and others. Special correspondence shall be promptly delivered and posted.
- Access to Detention Facilities: Detention facilities shall afford reasonable access to NGOs; community service organizations; consular officials; DOJ, DHS or public health personnel; members of Congress and their staff, intergovernmental organizations; the media, and others subject to reasonable conditions to protect the security of the facility. Independent observers, including nongovernmental organizations shall be permitted to conduct site visits, meet privately with detainees, test telephones and pro bono calling platforms, and take other reasonable steps to monitor compliance with regulations regarding conditions of detention. Such observers and organizations shall not be prohibited from issuing public reports on the findings of monitoring visits. Detention facilities shall accommodate requests for facility tours within a reasonable time not to exceed one week. Access by media representatives may only be restricted to preserve the privacy of detainees, the security and good order of the facility, safety of the interviewer, national security or other obligation imposed by law or court order. Access may not be restricted based on the media representative's reporting. Retaliation for content of speech is prohibited. Detention facilities may not retaliate against any visitor for complaints or statements regarding the conditions of detention.
- Translation Capabilities: Detention facilities shall employ staff that is qualified in the languages represented in the detainee population and shall provide alternative translation services where necessary.
- Recreational Programs and Activities: Detainees must be afforded daily access to recreational programs and activities.
- Safe and Sanitary Living Environment: Detention facilities may house no more individuals than is permitted by the rated bed capacity for the facility. Detainees must receive appropriate clothing and bedding.
- Legal Orientation to Ensure Effective Legal Proceedings: All alien detainees shall receive the legal orientation program including, for unaccompanied alien children, a child-centered model from an independent non-governmental organization as implemented by the Executive Office for Immigration Review in order to both maximize the efficiency and effectiveness of immigration proceedings and to reduce detention costs.

(5) Classification: DHS shall ensure that detainees with no history of criminal conviction are separated by sight and sound from detainees with criminal convictions, pretrial inmates facing criminal prosecution, and those inmates exhibiting violent behavior in detention.

(6) Vulnerable Populations: DHS's rules regarding conditions of detention for vulnerable populations shall recognize the unique needs of asylum seekers; victims of torture and trafficking; families with children; detainees who do not speak English; detainees with special religious needs; and other vulnerable populations listed in this bill. DHS shall ensure that procedures and conditions of detention are appropriate for vulnerable populations.

(7) Staffing: The DHS Secretary shall appoint at least three individuals to the Director of Policy with expertise in working with vulnerable populations who shall be responsible for setting, implementing and overseeing policy and regulatory development concerning vulnerable populations.

#### **Section 4. Secure Alternatives to Detention.**

*This section requires DHS to implement a secure alternatives to detention program that releases eligible alien detainees into programs of supervision and monitoring and ensures their appearance at immigration court hearings. The program requires DHS to release vulnerable aliens on recognizance, parole or bond, and alternatively in secure alternatives to detention programs. This section also requires DHS to implement less restrictive custodial detention, such as ankle bracelets, for those not found eligible for release in the above categories. Finally, DHS is required to develop facilities that offer the least restrictive setting for aliens in detention.*

(a) In General: DHS shall implement secure alternative to detention programs.

(b) Secure Alternatives to Detention Programs:

Secure alternatives to detention are programs under which aliens are released under supervision, assistance and monitoring to ensure they appear at all immigration proceedings. The programs will be designed in consultation with a broad array of experts and will employ a continuum of levels of supervision. Non-governmental organizations and state and local social service agencies will provide group and individual screenings and services to participants. All participation by aliens will be voluntary. All participants in these programs will participate in a legal orientation program administered by the Executive Office for Immigration Review.

(c) Protection of Vulnerable Populations:

Within 72 hours, DHS must screen each detainee to determine if the individual belongs to a vulnerable population group. Any individual described as a vulnerable population who meets the criteria set forth under section 236(b) shall be released on parole, a reasonable bond, or the alien's own recognizance.

Vulnerable populations include individuals who: have serious medical or mental health needs; are pregnant or nursing; are detained with their children; are under 18 or over 65 years of age; are the victims of abuse or human trafficking; individuals who have demonstrated a credible fear of persecution or a reasonable fear of torture; torture survivors; individuals who have non-frivolous claims to U.S. citizenship; and individuals who are eligible for relief under the Immigration and Nationality Act.

(d) Options Regarding Detention Decisions for Vulnerable Populations:

INA Section 236 is amended by inserting a new paragraph providing that DHS may enroll aliens in secure alternatives to detention programs. This section creates a new paragraph within INA Section 236 regarding custody decisions for vulnerable populations. Not later than 72 hours after an individual is detained under this section, if the individual is a member of a vulnerable population, the individual shall be released from DHS custody and shall not be subject to electronic monitoring unless the Department demonstrates that the individual is subject to mandatory detention; poses a flight risk, or the individual is a risk to others or a risk to the national security of the U.S. An individual shall be released under this section on the individual's own recognizance, by posting a minimum bond, or on parole in accordance with INA 212(d)(5)(A).

Participation in Alternatives to Detention. An alien who is denied release on recognizance, parole or bond or is unable to pay the bond shall be selected for participation in a secure alternatives to detention program unless DHS demonstrates by substantial evidence that the alien is subject to mandatory detention or the alien is a flight risk or the alien's participation in the program would create a risk to others or national security. In the case of a decision under this section, the decision shall be made in writing and shall be served upon the individual in the language spoken by the individual. A decision to continue detention without bond or parole shall specify in writing the reasons for that decision. The decision shall be served upon the alien within 72 hours after the commencement of the alien's detention or not later than 72 hours after a positive credible fear or reasonable fear of torture determination.

Any alien detained under this section may request a redetermination of the decision by an immigration judge. All custody decisions by the Secretary shall be subject to redetermination by an immigration judge. Nothing in the section shall be construed to prevent an individual from requesting a bond redetermination. The Attorney General or an immigration judge may at any time redetermine an alien's classification, the bond of someone released or the custody status of someone placed in an alternatives to detention program.

(e) Eligibility and Operations: Nothing in this section shall be construed to modify the care and custody of unaccompanied alien children who shall be considered to be in the care and custody of the Department of Health and Human Services.

(f) Less Restrictive Custodial Detention: Aliens who are determined not to meet the requirements for release on recognizance, parole, or bond, and subsequently do not meet the requirements for secure alternatives to detention shall be considered for placement in less restrictive forms of custodial detention, which consist of ankle bracelets, electronic monitoring and similar devices. Any use of electronic monitoring for an alien shall be made on an individual basis. Aliens subject to mandatory detention pursuant to INA §236 may be placed in less restrictive custodial detention. DHS shall develop facilities that offer the least restrictive custodial setting for aliens in detention.

## **Section 5. Program Oversight and Review**

(a) Relationships of Application to Certain Orders: Aliens present in the United States who have been ordered excluded, removed, deported or ordered to depart voluntarily may nonetheless be selected for secure alternatives to detention and shall not be required to file a separate motion to reopen, reconsider, or vacate such orders.

(b) Implementing Regulations: Requires DHS to issue regulations within 6 months of enactment.

(c) Reporting Requirements: Requires DHS to submit a report one year after enactment and annually thereafter to the House Committees on Homeland Security and on the Judiciary and the Senate Committees on Homeland Security and Governmental Affairs and on the Judiciary. The reports shall detail all policies, regulations, and actions DHS has taken to comply with this Act, specifically efforts to increase use of secure alternatives to detention and to improve conditions of detention.

(d) Authorization of Appropriation: This section authorizes appropriations to DHS to implement this Act.

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## The Child Citizen Protection Act, (H.R.182)

### *Bill Summary*

**Title:** To provide discretionary authority to an immigration judge to determine that an alien parent of a United States citizen child should not be ordered removed, deported, or excluded from the United States.

**Sponsor:** [Rep Serrano, Jose E.](#) [NY-16] (introduced 1/6/2009) [Cosponsors](#) (21)

**Latest Major Action:** 2/9/2009 Referred to House subcommittee. Status: Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

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#### **This bill includes the following provision:**

Section 1. Discretionary Authority with respect to Removal, Deportation, or Exclusion of Parents of Citizen Children.

This legislation would return discretion to immigration judges in cases where removal of an immigrant is clearly contrary to the best interest of a United States citizen child by amending the Immigration and Nationality Act, in the case of an immigrant subject to removal, deportation, or exclusion who is the parent of a U.S. citizen child, to authorize an immigration judge to decline to order such removal if the judge determines that such action is against the child's best interests.

The bill would not require that the parents remain in the country, it would allow the judge to consider the interests of the child when he or she weighs the evidence in the case.

Such discretion shall not apply with respect to an immigrant whom the judge determines: (1) is excludable or deportable on security grounds; or (2) has engaged in sex trafficking or severe forms of trafficking in persons.

**For more information about this legislation, contact Manisha Vaze at [Manisha@familiesforfreedom.org](mailto:Manisha@familiesforfreedom.org)**