

117TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. BOOKER (for himself, Mr. LEAHY, Ms. WARREN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. SENSE OF CONGRESS.**

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

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

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

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

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

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

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

18 **SEC. 4. STANDARDS FOR DEPARTMENT OF HOMELAND SE-**
19 **CURITY DETENTION FACILITIES.**

20 (a) RULEMAKING.—Not later than 1 year after the
21 date of the enactment of this Act, the Secretary shall, by
22 regulation, establish detention standards for each facility
23 at which aliens in the custody of the Department are de-
24 tained.

25 (b) MINIMUM PROTECTION.—The standards estab-
26 lished under subsection (a) shall provide, at a minimum,

1 the level of protection for detainees described in the Amer-
2 ican Bar Association’s Civil Immigration Detention Stand-
3 ards (adopted in August 2012, and as modified in August
4 2014).

5 (c) BIENNIAL UPDATES.—Not less frequently than
6 biennially, the Secretary shall review and update such
7 standards, as appropriate.

8 **SEC. 5. OVERSIGHT AND TRANSPARENCY.**

9 (a) PERIODIC INSPECTIONS.—

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

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

21 (A) submit a report to the Secretary con-
22 taining the results of such inspection; and

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

25 (3) FAILURE TO COMPLY WITH STANDARDS.—

1 (A) INITIAL FAILURE.—

2 (i) IN GENERAL.—If the Inspector
3 General determines that a facility has
4 failed to comply with the standards estab-
5 lished under section 4 for the first time
6 during any 2-year period, and such non-
7 compliance constitutes a deficiency that
8 threatens the health, safety, or rights of
9 detainees—

10 (I) the Inspector General shall
11 notify the Secretary of such deter-
12 mination; and

13 (II) the Secretary shall—

14 (aa) in the case of a facility
15 not owned by the Department,
16 impose a meaningful fine of not
17 less than 10 percent of the value
18 of the contract with the facility;
19 and

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

22 (AA) issue a written
23 warning to the facility not
24 later than 30 days after re-
25 ceiving such notification

1 from the Inspector General,
2 which shall include remedial
3 measures to be carried out
4 not later than 60 days after
5 the issuance of the warning;
6 and

7 (BB) not later than 60
8 days after the issuance of a
9 warning under subitem
10 (AA), certify to the Inspec-
11 tor General that the reme-
12 dial measures have been car-
13 ried out.

14 (ii) FOLLOW-UP INSPECTION.—Not
15 later than 180 days after the date on
16 which the Inspector General makes a noti-
17 fication under clause (i)(I), the Inspector
18 General shall conduct an in-person inspec-
19 tion of the facility to determine whether
20 the facility has achieved compliance with
21 the standards established under section 4.

22 (B) SUBSEQUENT FAILURES.—If the In-
23 spector General determines that a facility has
24 failed to comply with the standards established
25 under section 4 in 2 or more inspections under

1 paragraph (1) during any 2-year period, and
2 such noncompliance constitutes a deficiency
3 that threatens the health, safety, or rights of
4 detainees—

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

7 (ii) the Secretary shall—

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

10 (aa) not later than 30 days
11 after receiving such notification,
12 transfer each detainee to a facil-
13 ity that does so comply; and

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

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

19 (aa) not later than 60 days
20 after receiving such notification,
21 transfer each detainee to a facil-
22 ity that does so comply; and

23 (bb) suspend the use of such
24 facility until such time as the In-
25 spector General—

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

5 (BB) makes available
6 to the public on the internet
7 website of the Department
8 information relating to the
9 remedial measures taken.

10 (b) DEATHS IN CUSTODY.—

11 (1) NOTIFICATION.—Not later than 24 hours
12 after the death of an alien in the custody of the De-
13 partment, the Secretary shall notify the appropriate
14 committees of Congress of such death.

15 (2) INVESTIGATIONS.—

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

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

4 (i) by appropriately qualified per-
5 sonnel, including 1 or more medical profes-
6 sionals qualified in a field relevant to the
7 cause of death; and

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

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

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

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

21 (D) REVIEW BY INSPECTOR GENERAL.—
22 Not later than 90 days after the death of an
23 alien in the custody of the Department, the In-
24 spector General shall conduct a review of the

1 report issued under subparagraph (C) with re-
2 spect to such death.

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

9 (A) the location of the death; or

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

14 (c) REPORT TO CONGRESS.—

15 (1) IN GENERAL.—Not less frequently than an-
16 nually, the Secretary shall submit to the appropriate
17 committees of Congress a report on the inspections
18 and oversight of facilities at which aliens in the cus-
19 tody of the Department are detained.

20 (2) ELEMENTS.—Each report required by para-
21 graph (1) shall include, for the preceding year—

22 (A) a list of detention facilities found by
23 the Inspector General to be in noncompliance
24 with the standards established under section 4;

1 (B) for each such facility, a description of
2 the remedial actions taken, or planned to be
3 taken, by the Secretary so as to achieve compli-
4 ance with such standards; and

5 (C) a determination as to whether such re-
6 medial actions have succeeded in bringing the
7 facility into compliance with such standards.

8 (d) CLASSIFICATION OF DOCUMENTS FOR PURPOSES
9 OF FOIA.—The reports required by subsections (a)(2)
10 and (b)(2)(C), and any contract between the Department
11 and a private or public entity that provides for the use
12 of a facility not owned by the Department to detain aliens
13 in the custody of the Department, are considered records
14 for purposes of section 552 of title 5, United States Code,
15 and do not qualify for the exception under subsection
16 (b)(4) of such section.

17 (e) FACILITIES MATRIX.—

18 (1) IN GENERAL.—On the first day of each
19 month, the Secretary shall ensure that a publicly ac-
20 cessible internet website of the Department contains
21 the information described in paragraph (2) for each
22 facility at which aliens in the custody of the Depart-
23 ment are detained.

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

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

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

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

10 (D) The total number of aliens detained in
11 the facility on the last day of the preceding
12 month, disaggregated by gender and classifica-
13 tion as a child or as an adult.

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

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

18 (G) The average number of aliens detained
19 in the facility during the current year and dur-
20 ing the preceding month, disaggregated by gen-
21 der and classification as a child or as an adult.

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

24 (I) In the case of a facility not owned by
25 the Department, a description of the nature of

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

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

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

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

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

15 (3) removed from the United States.

16 (g) INFORMATION COLLECTED AND MAINTAINED
17 REGARDING ALIENS IN DHS CUSTODY.—The Secretary
18 shall collect and maintain, for each alien in the custody
19 of the Department, the following information:

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

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

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

24 (4) Whether the alien is considered a vulnerable
25 person (as such term is defined in section 236(e)(5))

1 of the Immigration and Nationality Act, as amended
2 by section 9) or a primary caregiver.

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

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

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

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

11 (B) the reason for the transfer; and

12 (C) in the case of a transfer effectuated
13 despite presence of the alien's legal counsel or
14 immediate relative in the jurisdiction of the
15 original detention facility, a justification for
16 such transfer.

17 (8) The status and basis of any removal pro-
18 ceedings of which the alien is the subject.

19 (9) The initial custody determination made by
20 U.S. Immigration and Customs Enforcement, in-
21 cluding any review of such determination.

22 (10) The date of the alien's release or removal,
23 and the reason for such release or removal, as appli-
24 cable.

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

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

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

8 **SEC. 6. CIVIL ACTIONS.**

9 (a) IN GENERAL.—An individual detained in a facil-
10 ity required to comply with the standards established
11 under section 4 who is injured as a result of a violation
12 of such standards may file a claim in the appropriate dis-
13 trict court of the United States.

14 (b) RECOVERY.—In a civil action under this sub-
15 section, the court may order injunctive relief and compen-
16 satory damages, and may award the prevailing party rea-
17 sonable attorney fees, and costs.

18 **SEC. 7. DETENTION FACILITY CONSTRUCTION AND MAIN-**
19 **TENANCE.**

20 (a) RESTRICTION ON CONSTRUCTION.—

21 (1) IN GENERAL.—Not later than 180 days be-
22 fore initiating, or entering into a contract for, the
23 construction of a new facility or the expansion of an
24 existing facility for the detention of aliens in the
25 custody of the Department, the Secretary shall sub-

1 mit to the appropriate committees of Congress a no-
2 tification of the plan to construct or expand such fa-
3 cility, including—

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

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

8 (C) the intended population to be detained
9 at such facility, including the gender and age
10 category of such population.

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

15 (b) PHASE-OUT OF PRIVATE DETENTION FACILITIES
16 AND USE OF JAILS.—

17 (1) SECURE DETENTION FACILITIES.—

18 (A) IN GENERAL.—The Secretary—

19 (i) may not enter into or extend any
20 contract or agreement with any public or
21 private for-profit entity that owns or oper-
22 ates a detention facility for use of such fa-
23 cility to detain aliens in the custody of the
24 Department; and

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

5 (B) OWNERSHIP REQUIREMENT.—Begin-
6 ning on the date that is 3 years after the date
7 of the enactment of this Act, any facility at
8 which aliens in the custody of the Department
9 are detained shall be owned and operated by
10 the Department.

11 (2) ALTERNATIVES TO DETENTION PRO-
12 GRAMS.—

13 (A) IN GENERAL.—The Secretary—

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

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

1 (B) OWNERSHIP AND OPERATION RE-
2 QUIREMENT.—Beginning on the date that is 3
3 years after the date of the enactment of this
4 Act, any program or facility used for the activi-
5 ties described in subparagraph (A)(i) shall be
6 owned and operated by a nonprofit organization
7 or the Department.

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

13 **SEC. 8. APPEARANCE OF DETAINED ALIENS FOR OTHER**
14 **LEGAL MATTERS.**

15 The Secretary shall establish rules to ensure that any
16 alien detained in the custody of the Department who is
17 required to appear in Federal or State court (including
18 family court) for another matter is transported by an offi-
19 cer or employee of the Department to such court pro-
20 ceeding.

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

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

1 **“SEC. 236. APPREHENSION AND DETENTION OF ALIENS.**

2 “(a) **ARREST, DETENTION, AND RELEASE.—**

3 “(1) **IN GENERAL.—**On a warrant issued by an
4 immigration judge, or pursuant to section 287(a)(2),
5 the Secretary of Homeland Security may arrest an
6 alien, and in accordance with this section, detain the
7 alien or release the alien on bond, subject to condi-
8 tions or recognizance, pending a decision on whether
9 the alien is to be removed from the United States.

10 “(2) **EXEMPTION FOR UNACCOMPANIED ALIEN**
11 **CHILDREN.—**

12 “(A) **IN GENERAL.—**This section shall not
13 apply to unaccompanied alien children (as de-
14 fined in section 462(g)(2) of the Homeland Se-
15 curity Act of 2002 (6 U.S.C. 279(g)(2)).

16 “(B) **TRANSFER OF CUSTODY.—**Any unac-
17 companied alien child in the custody of the Sec-
18 retary of Homeland Security shall be trans-
19 ferred to the custody of the Secretary of Health
20 and Human Services pursuant to section
21 235(b)(3) of the William Wilberforce Traf-
22 ficking Victims Protection Reauthorization Act
23 of 2008 (8 U.S.C. 1232(b)(3)).

24 “(b) **BOND DETERMINATION.—**

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

1 “(A) consider, for purposes of setting the
2 amount of the bond, the alien’s financial posi-
3 tion and ability to pay the bond without impos-
4 ing financial hardship on the alien; and

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

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

12 “(c) CUSTODY DETERMINATION.—

13 “(1) INITIAL DETERMINATION.—

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

24 “(B) LEAST RESTRICTIVE CONDITIONS.—

25 With respect to a custody determination under

1 subparagraph (A), if the Secretary determines
2 that the release of an alien will not reasonably
3 ensure the appearance of the alien as required
4 or will endanger the safety of any other indi-
5 vidual or the community, the Secretary shall
6 impose the least restrictive conditions, as de-
7 scribed in paragraph (4).

8 “(2) TIMING.—

9 “(A) IN GENERAL.—An alien who seeks to
10 challenge the initial custody determination
11 under paragraph (1) shall be provided with the
12 opportunity for a hearing before an immigra-
13 tion judge not later than 72 hours after the ini-
14 tial custody determination to determine whether
15 the alien should be detained.

16 “(B) ACCESS TO COUNSEL.—On request
17 by an alien, or the legal counsel of an alien, an
18 immigration judge may grant a reasonable con-
19 tinuance of a hearing under subparagraph (A)
20 to provide the alien or such legal counsel addi-
21 tional time to prepare for the hearing.

22 “(3) PRESUMPTION OF RELEASE.—

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

1 “(B) REBUTTAL.—

2 “(i) IN GENERAL.—The Secretary of
3 Homeland Security has the duty of rebut-
4 ting this presumption, which may only be
5 established based on clear and convincing
6 evidence, including credible and individual-
7 ized information, that—

8 “(I) the use of alternatives to de-
9 tention will not reasonably ensure the
10 appearance of the alien at removal
11 proceedings; or

12 “(II) the alien is a threat to any
13 other individual or the community.

14 “(ii) CONSIDERATION.—The Attorney
15 General—

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

18 “(II) may not rely on an alien’s
19 criminal conviction, arrest, pending
20 criminal charge, or combination there-
21 of as the sole factor to justify the con-
22 tinued detention of the alien.

23 “(4) LEAST RESTRICTIVE CONDITIONS RE-
24 QUIRED.—

1 “(A) IN GENERAL.—If an immigration
2 judge determines, pursuant to a hearing under
3 this section, that the release of an alien will not
4 reasonably ensure the appearance of the alien
5 as required or will endanger the safety of any
6 other individual or the community, the immi-
7 gration judge shall order the least restrictive
8 conditions, or combination of conditions, that
9 the judge determines will reasonably ensure the
10 appearance of the alien as required and the
11 safety of any other individual and the commu-
12 nity, which may include—

13 “(i) release on recognizance;

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

16 “(iii) participation in a program de-
17 scribed in subsection (f).

18 “(B) MONTHLY REVIEW.—Not less fre-
19 quently than monthly, the immigration judge
20 shall review any condition assigned to an alien
21 pursuant to subparagraph (A).

22 “(C) MODIFICATION OF CONDITIONS OF
23 SUPERVISION.—An immigration judge may
24 modify or rescind conditions of supervision im-

1 posed on an alien by the Secretary of Homeland
2 Security.

3 “(5) SPECIAL RULE FOR VULNERABLE PER-
4 SONS AND PRIMARY CAREGIVERS.—

5 “(A) IN GENERAL.—In the case of an alien
6 subject to a custody determination under this
7 subsection who is a vulnerable person or a pri-
8 mary caregiver, the alien may not be detained
9 unless the Secretary of Homeland Security
10 demonstrates, in addition to the requirements
11 under paragraph (3), that it is unreasonable or
12 not practicable to place the alien in a commu-
13 nity-based supervision program.

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

15 “(i) MATERIAL WITNESS.—The term
16 ‘material witness’ means an individual who
17 presents a declaration to an attorney inves-
18 tigating, prosecuting, or defending a work-
19 place claim or from the presiding officer
20 overseeing a workplace claim attesting
21 that, to the best of the declarant’s knowl-
22 edge and belief, reasonable cause exists to
23 believe that the testimony of the individual
24 will be relevant to the outcome of the
25 workplace claim.

1 ducted under section 235(b)(1)(B) to
2 have a credible fear of persecution or
3 torture;

4 “(IX) has limited English lan-
5 guage proficiency and is not provided
6 access to appropriate and meaningful
7 language services in a timely fashion;
8 or

9 “(X) has been determined by an
10 immigration judge or by the Secretary
11 of Homeland Security to have experi-
12 enced or to be experiencing severe
13 trauma or to be a survivor of torture
14 or gender-based violence, based on in-
15 formation obtained during intake,
16 from the alien’s attorney or legal serv-
17 ice provider, or through credible self-
18 reporting.

19 “(iv) WORKPLACE CLAIM.—The term
20 ‘workplace claim’ means any written or
21 oral claim, charge, complaint, or grievance
22 filed with, communicated to, or submitted
23 to the employer, a Federal, State, or local
24 agency or court, or an employee represent-
25 ative, related to the violation of applicable

1 Federal, State, and local labor laws, in-
2 cluding laws concerning wages and hours,
3 labor relations, family and medical leave,
4 occupational health and safety, civil rights,
5 or nondiscrimination.

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

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

12 “(B) every 60 days; and

13 “(C) upon showing of a change in cir-
14 cumstances or good cause for such a hearing.

15 “(d) RELEASE UPON AN ORDER GRANTING RELIEF
16 FROM REMOVAL.—The Secretary of Homeland Security—

17 “(1) shall immediately release an alien with re-
18 spect to whom an immigration judge has entered an
19 order providing relief from removal (including an
20 order granting asylum or withholding, deferral, or
21 cancellation of removal) or an order terminating re-
22 moval proceedings, which order is pending appeal,
23 upon entry of the order; and

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

1 “(C) provides services in the appropriate
2 language.

3 “(2) PROHIBITION ON ELECTRONIC SURVEIL-
4 LANCE.—The program under paragraph (1) may not
5 include, as an alternative to detention, the provision
6 of ankle monitors or other forms of electronic sur-
7 veillance.

8 “(3) CONTRACTS.—

9 “(A) IN GENERAL.—The Secretary may
10 enter into 1 or more contracts to operate the
11 case management program described in para-
12 graph (1).

13 “(B) PRIORITIZATION.—In entering into a
14 contract under subparagraph (A), the Secretary
15 shall give priority to direct contracts with quali-
16 fied nongovernmental community-based organi-
17 zations that have experience providing services
18 to immigrant, refugee, and asylum-seeking pop-
19 ulations.

20 “(4) INDIVIDUALIZED DETERMINATION RE-
21 QUIRED.—

22 “(A) IN GENERAL.—In determining wheth-
23 er to order an alien to participate in a program
24 under this subsection, the Secretary or the im-
25 migration judge, as appropriate, shall make an

1 individualized determination to determine the
2 appropriate level of supervision for the alien.

3 “(B) EXEMPTION.—Participation in a pro-
4 gram under this subsection may not be ordered
5 for an alien for whom it is determined that re-
6 lease on reasonable bond or recognizance will
7 reasonably ensure the appearance of the alien
8 as required and the safety of any other indi-
9 vidual and the community.

10 “(5) PROHIBITION ON FEES FOR ALTER-
11 NATIVES TO DETENTION.—An alien who is required
12 to participate in a specific alternatives to detention
13 program or service may not be charged a fee for
14 such participation.

15 “(6) CASE MANAGEMENT REVIEW AND FEASI-
16 BILITY STUDY.—Not later than 180 days after the
17 date of the enactment of the Dignity for Detained
18 Immigrants Act of 2021, the Secretary shall con-
19 duct—

20 “(A) a review of best practices in federally
21 funded case management programs and related
22 services; and

23 “(B) a study of the feasibility of transfer-
24 ring alternatives to detention case management

1 programs out of the purview of the Department
2 of Homeland Security.”.

3 (b) PROBABLE CAUSE HEARING.—Section 287(a) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1357(a)(2)) is amended by striking the subsection des-
6 ignation and all that follows through “United States;” in
7 paragraph (2) and inserting the following:

8 “(a) IN GENERAL.—Any officer or employee of the
9 Department of Homeland Security authorized under regu-
10 lations prescribed by the Secretary of Homeland Security
11 shall have power without warrant—

12 “(1) to interrogate any alien or person believed
13 to be an alien as to the person’s right to be or to
14 remain in the United States, provided that such in-
15 terrogation is not based on the person’s race, eth-
16 nicity, national origin, religion, sexual orientation,
17 color, spoken language, or English language pro-
18 ficiency; and

19 “(2) to arrest any alien who, in the presence or
20 view of the officer or employee, is entering or at-
21 tempting to enter the United States in violation of
22 any law or regulation made pursuant to law regu-
23 lating the admission, exclusion, expulsion, or re-
24 moval of aliens, or to arrest any alien in the United
25 States, if—

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

3 “(i) the alien is in the United States
4 in violation of any such law or regulation;
5 and

6 “(ii) is likely to escape before a war-
7 rant can be obtained for the arrest of the
8 alien;

9 “(B) the officer or employee has reason to
10 believe that the alien would knowingly and will-
11 fully fail to appear in immigration court in re-
12 sponse to a properly served notice to appear;
13 and

14 “(C) not later than 48 hours after being
15 taken into custody, the alien is provided with a
16 hearing before an immigration judge to deter-
17 mine whether there was probable cause for such
18 arrest, including probable cause to believe that
19 the alien would have knowingly and willfully
20 failed to appear as required under subpara-
21 graph (B) if the alien had not been arrested,
22 which burden to establish probable cause shall
23 be on the Department of Homeland Security;”.

24 (c) MANDATORY DETENTION REPEALED.—

1 (1) IN GENERAL.—The Immigration and Na-
2 tionality Act (8 U.S.C. 1101 et seq.) is amended—
3 (A) in section 235(b) (8 U.S.C. 1225(b))—
4 (i) in paragraph (1)(B)—
5 (I) in clause (ii), by striking “de-
6 tained” and inserting “referred”; and
7 (II) in clause (iii), by striking
8 subclause (IV); and
9 (ii) in paragraph (2)(A), by striking
10 “detained” and inserting “referred”;
11 (B) by striking section 236A (8 U.S.C.
12 1226);
13 (C) in section 238(a)(2) (8 U.S.C.
14 1228(a)(2)), by striking “pursuant to section
15 236(c),”; and
16 (D) in section 506(a)(2) (8 U.S.C.
17 1536(a)(2))—
18 (i) by amending the heading to read
19 as follows: “RELEASE HEARING FOR
20 ALIENS DETAINED”; and
21 (ii) in subparagraph (A)—
22 (I) by amending the heading to
23 read as follows: “IN GENERAL”;

1 (II) in the matter preceding
2 clause (i), by striking “lawfully admit-
3 ted for permanent residence”;

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

5 (IV) by redesignating clauses (ii)
6 and (iii) as clauses (i) and (ii), respec-
7 tively.

8 (2) CONFORMING AMENDMENTS.—

9 (A) The table of sections for the Immigra-
10 tion and Nationality Act (8 U.S.C. 1101 et
11 seq.) is amended by striking the item relating
12 to section 236A.

13 (B) Section 241(c)(3)(A)(ii) of the Immi-
14 gration and Nationality Act (8 U.S.C.
15 1231(c)(3)(A)(ii)) is amended—

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

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

20 (E) by striking subclause (III).

21 (d) ALIENS ORDERED REMOVED.—

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

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

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

6 “(2) INITIAL CUSTODY REDETERMINATION
7 HEARING.—

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

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

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

20 “(ii) the alien does not pose a risk to
21 the safety of any other individual or the
22 community.”;

23 (C) in paragraph (3)—

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

1 (ii) in the matter preceding subpara-
2 graph (A), by striking “the alien, pending
3 removal, shall be subject to supervision
4 under” and inserting the following: “except
5 as provided in paragraph (6), any alien
6 who has been detained during the removal
7 period shall be released from custody,
8 pending removal, subject to individualized
9 supervision requirements in accordance
10 with”;

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

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

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

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

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

3 “(ii) the alien poses a risk to the safe-
4 ty of any other individual or the commu-
5 nity, which—

6 “(I) may only be established
7 based on credible and individualized
8 information; and

9 “(II) may not be established
10 based solely on the fact that the alien
11 has been charged with, or is suspected
12 of, a crime.

13 “(C) PERIOD OF DETENTION.—

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

18 “(ii) SUBSEQUENT REDETERMINA-
19 TION HEARING.—The Secretary of Home-
20 land Security may seek subsequent redeter-
21 mination hearings under this paragraph in
22 order to continue detaining an alien be-
23 yond each such 60-day period.”; and
24 (E) by striking paragraph (7).

1 (II) in paragraph (4), by striking
2 “section 241(a)” and inserting “sec-
3 tion 237(a)”;

4 (iii) by redesignating the second sub-
5 section (c) as subsection (d);

6 (B) in section 276(b)(4) (8 U.S.C.
7 1326(b)(4)), by striking “section 241(a)(4)(B)”
8 and inserting “section 237(a)(4)(B)”;

9 (C) in section 501(1) (8 U.S.C. 1531(1)),
10 by striking “section 241(a)(4)(B)” and insert-
11 ing “section 237(a)(4)(B)”.

12 **SEC. 10. PROHIBITION ON SOLITARY CONFINEMENT.**

13 (a) IN GENERAL.—An individual in the custody of
14 the Department may not be placed in solitary confine-
15 ment.

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

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

1 (2) in the case of an individual who is 21 years
2 of age or younger, involuntary confinement alone in
3 a cell, room, or other area for a period greater than
4 3 hours.