

110TH CONGRESS  
2D SESSION

# S. 3114

To provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2008

Mr. LIEBERMAN (for himself, Mr. BROWNBACK, Mr. KENNEDY, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, 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 “Secure and Safe De-  
5 tention and Asylum Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ASYLUM SEEKER.—The term “asylum seek-  
9 er” means an applicant for asylum under section

1 208 of the Immigration and Nationality Act (8  
2 U.S.C. 1158) or for withholding of removal under  
3 section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3))  
4 or an alien who indicates an intention to apply for  
5 relief under either such section and does not include  
6 a person with respect to whom a final adjudication  
7 denying an application made under either such sec-  
8 tion has been entered.

9 (2) CREDIBLE FEAR OF PERSECUTION.—The  
10 term “credible fear of persecution” has the meaning  
11 given that term in section 235(b)(1)(B)(v) of the  
12 Immigration and Nationality Act (8 U.S.C.  
13 1225(b)(1)(B)(v)).

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

16 (4) DETAINEE.—The term “detainee” means  
17 an alien in the Department’s custody held in a de-  
18 tention facility.

19 (5) DETENTION FACILITY.—The term “deten-  
20 tion facility” means any Federal facility in which an  
21 asylum seeker, an alien detained pending the out-  
22 come of a removal proceeding, or an alien detained  
23 pending the execution of a final order of removal, is  
24 detained for more than 72 hours, or any other facil-  
25 ity in which such detention services are provided to

1 the Federal Government by contract, and does not  
2 include detention at any port of entry in the United  
3 States.

4 (6) REASONABLE FEAR OF PERSECUTION OR  
5 TORTURE.—The term “reasonable fear of persecu-  
6 tion or torture” has the meaning described in sec-  
7 tion 208.31 of title 8, Code of Federal Regulations.

8 (7) SECRETARY.—The term “Secretary” means  
9 the Secretary of Homeland Security.

10 (8) STANDARD.—The term “standard” means  
11 any policy, procedure, or other requirement.

12 (9) VULNERABLE POPULATIONS.—The term  
13 “vulnerable populations” means classes of aliens  
14 subject to the Immigration and Nationality Act (8  
15 U.S.C. 1101 et seq.) who have special needs requir-  
16 ing special consideration and treatment by virtue of  
17 their vulnerable characteristics, including experi-  
18 ences of, or risk of, abuse, mistreatment, or other  
19 serious harms threatening their health or safety.  
20 Vulnerable populations include the following:

21 (A) Asylum seekers.

22 (B) Refugees admitted under section 207  
23 of the Immigration and Nationality Act (8  
24 U.S.C. 1157) and individuals seeking such ad-  
25 mission.

1 (C) Aliens whose deportation is being with-  
2 held under section 243(h) of the Immigration  
3 and Nationality Act (as in effect immediately  
4 before the effective date of section 307 of the  
5 Illegal Immigration Reform and Immigrant Re-  
6 sponsibility Act of 1996 (Public Law 104–208;  
7 110 Stat. 3009–612)) or section 241(b)(3) of  
8 the Immigration and Nationality Act (8 U.S.C.  
9 1231(b)(3)).

10 (D) Aliens granted or seeking protection  
11 under article 3 of the Convention Against Tor-  
12 ture and other Cruel, Inhumane, or Degrading  
13 Treatment or Punishment, done at New York,  
14 December 10, 1994.

15 (E) Applicants for relief and benefits  
16 under the Immigration and Nationality Act  
17 pursuant to the amendments made by the Traf-  
18 ficking Victims Protection Act of 2000 (division  
19 A of Public Law 106–386; 114 Stat. 1464), in-  
20 cluding applicants for nonimmigrant status  
21 under subparagraph (T) or (U) of section  
22 101(a)(15) of the Immigration and Nationality  
23 Act (8 U.S.C. 1101(a)(15)).

24 (F) Applicants for relief and benefits  
25 under the Immigration and Nationality Act

1           pursuant to the amendments made by the Vio-  
2           lence Against Women Act of 2000 (division B  
3           of Public Law 106–386; 114 Stat. 1491).

4           (G) Unaccompanied alien children (as de-  
5           fined in 462(g) of the Homeland Security Act  
6           of 2002 (6 U.S.C. 279(g)).

7 **SEC. 3. RECORDING SECONDARY INSPECTION INTERVIEWS.**

8           (a) IN GENERAL.—The Secretary shall establish  
9           quality assurance procedures to ensure the accuracy and  
10          verifiability of signed or sworn statements taken by em-  
11          ployees of the Department exercising expedited removal  
12          authority under section 235(b) of the Immigration and  
13          Nationality Act (8 U.S.C. 1225(b)).

14          (b) FACTORS RELATING TO SWORN STATEMENTS.—  
15          Any sworn or signed written statement taken of an alien  
16          as part of the record of a proceeding under section  
17          235(b)(1)(A) of the Immigration and Nationality Act (8  
18          U.S.C. 1225(b)(1)(A)) shall be accompanied by a record-  
19          ing of the interview which served as the basis for that  
20          sworn statement.

21          (c) RECORDINGS.—

22                  (1) IN GENERAL.—The recording of the inter-  
23          view shall also include the written statement, in its  
24          entirety, being read back to the alien in a language  
25          that the alien claims to understand, and the alien af-

1       firming the accuracy of the statement or making any  
2       corrections thereto.

3           (2) FORMAT.—The recording shall be made in  
4       video, audio, or other equally reliable format.

5       (d) EXEMPTION AUTHORITY.—

6           (1) Subsections (b) and (c) shall not apply to  
7       interviews that occur at facilities exempted by the  
8       Secretary pursuant to this subsection.

9           (2) The Secretary or the Secretary’s designee  
10       may exempt any facility based on a determination by  
11       the Secretary or the Secretary’s designee that com-  
12       pliance with subsections (b) and (c) at that facility  
13       would impair operations or impose undue burdens or  
14       costs.

15          (3) The Secretary or the Secretary’s designee  
16       shall report annually to Congress on the facilities  
17       that have been exempted pursuant to this sub-  
18       section.

19          (4) The exercise of the exemption authority  
20       granted by this subsection shall not give rise to a  
21       private cause of action.

22       (e) INTERPRETERS.—The Secretary shall ensure that  
23       a professional fluent interpreter is used when the inter-  
24       viewing officer does not speak a language understood by  
25       the alien and there is no other Federal, State, or local

1 government employee available who is able to interpret ef-  
2 fectively, accurately, and impartially.

3 (f) RECORDINGS IN IMMIGRATION PROCEEDINGS.—

4 Recordings of interviews of aliens described in subsection  
5 (b) shall be included in the record of a proceeding and  
6 may be considered as evidence in any further proceedings  
7 involving the alien.

8 **SEC. 4. PROCEDURES GOVERNING DETENTION DECISIONS.**

9 Section 236 of the Immigration and Nationality Act  
10 (8 U.S.C. 1226) is amended—

11 (1) in subsection (a)—

12 (A) in the matter preceding paragraph

13 (1)—

14 (i) in the first sentence by striking  
15 “Attorney General” and inserting “Sec-  
16 retary of Homeland Security”;

17 (ii) by striking “(c)” and inserting  
18 “(d)”;

19 (iii) in the second sentence by striking  
20 “Attorney General” and inserting “Sec-  
21 retary”;

22 (B) in paragraph (2)—

23 (i) in subparagraph (A)—

24 (I) by striking “Attorney Gen-  
25 eral” and inserting “Secretary”; and

1 (II) by striking “or” at the end;

2 (ii) in subparagraph (B), by striking

3 “but” at the end; and

4 (iii) by inserting after subparagraph

5 (B) the following:

6 “(C) the alien’s own recognizance; or

7 “(D) a secure alternatives program as pro-  
8 vided for in this section; but”;

9 (2) by redesignating subsections (b), (c), (d),  
10 and (e) as subsections (d), (e), (f), and (h), respec-  
11 tively;

12 (3) by inserting after subsection (a) the fol-  
13 lowing new subsections:

14 “(b) CUSTODY DECISIONS.—

15 “(1) IN GENERAL.—In the case of a decision  
16 under subsection (a) or (d), the following shall  
17 apply:

18 “(A) The decision shall be made in writing  
19 and shall be served upon the alien. A decision  
20 to continue detention without bond or parole  
21 shall specify in writing the reasons for that de-  
22 cision.

23 “(B) The decision shall be served upon the  
24 alien within 72 hours of the alien’s detention  
25 or, in the case of an alien subject to section 235

1 or 241(a)(5) who must establish a credible fear  
2 of persecution or a reasonable fear of persecu-  
3 tion or torture in order to proceed in immigra-  
4 tion court, within 72 hours of a positive credible  
5 fear of persecution or reasonable fear of perse-  
6 cution or torture determination.

7 “(2) CRITERIA TO BE CONSIDERED.—The cri-  
8 teria to be considered by the Secretary and the At-  
9 torney General in making a custody decision shall  
10 include—

11 “(A) whether the alien poses a risk to pub-  
12 lic safety or national security;

13 “(B) whether the alien is likely to appear  
14 for immigration proceedings; and

15 “(C) any other relevant factors.

16 “(3) CUSTODY REDETERMINATION.—An alien  
17 subject to this section may at any time after being  
18 served with the Secretary’s decision under sub-  
19 sections (a) or (d) request a redetermination of that  
20 decision by an immigration judge. All decisions by  
21 the Secretary to detain an alien without bond or pa-  
22 role shall be subject to redetermination by an immi-  
23 gration judge within 2 weeks from the time the alien  
24 was served with the decision, except that the alien  
25 may waive the requirement that the redetermination

1 occur within 2 weeks. The alien may request another  
2 redetermination upon a showing of a material  
3 change in circumstances since the last determina-  
4 tion hearing.

5 “(c) EXCEPTION FOR MANDATORY DETENTION.—  
6 Subsection (b) shall not apply to any alien who is subject  
7 to mandatory detention under section  
8 235(b)(1)(B)(iii)(IV), 236(c), or 236A or who has a final  
9 order of removal and has no proceedings pending before  
10 the Executive Office for Immigration Review.”;

11 (4) in subsection (d), as redesignated—

12 (A) by striking “Attorney General” and in-  
13 serting “Secretary”; and

14 (B) by striking “or parole” and inserting  
15 “, parole, or decision to release.”;

16 (5) in subsection (e), as redesignated—

17 (A) by striking “Attorney General” and in-  
18 serting “Secretary” each place it appears; and

19 (B) in paragraph (2), by inserting “or for  
20 humanitarian reasons,” after “such an inves-  
21 tigation.”;

22 (6) in subsection (f), as redesignated—

23 (A) in the matter preceding paragraph (1),  
24 by striking “Attorney General” and inserting  
25 “Secretary”;

1 (B) in paragraph (1), in subparagraphs  
2 (A) and (B), by striking “Service” and insert-  
3 ing “Department of Homeland Security”; and

4 (C) in paragraph (3), by striking “Service”  
5 and inserting “Secretary of Homeland Secu-  
6 rity”;

7 (7) by inserting after subsection (f), as redesign-  
8 nated, the following new subsection:

9 “(g) ADMINISTRATIVE REVIEW.—If an immigration  
10 judge’s custody decision has been stayed by the action of  
11 an officer or employee of the Department of Homeland  
12 Security, the stay shall expire in 30 days, unless the Board  
13 of Immigration Appeals before the expiration of the 30  
14 days, and upon motion, enters an order continuing the  
15 stay.”; and

16 (8) in subsection (h), as redesignated—

17 (A) by striking “Attorney General’s” and  
18 inserting “Secretary of Homeland Security’s”;  
19 and

20 (B) by striking “Attorney General” and in-  
21 serting “Secretary”.

22 **SEC. 5. LEGAL ORIENTATION PROGRAM.**

23 (a) IN GENERAL.—The Attorney General, in con-  
24 sultation with the Secretary, shall ensure that all detained  
25 aliens in immigration and asylum proceedings receive legal

1 orientation through a program administered and imple-  
2 mented by the Executive Office for Immigration Review  
3 of the Department of Justice.

4 (b) CONTENT OF PROGRAM.—The legal orientation  
5 program developed pursuant to this section shall be based  
6 on the Legal Orientation Program carried out by the Ex-  
7 ecutive Office for Immigration Review on the date of the  
8 enactment of this Act.

9 (c) EXPANSION OF LEGAL ASSISTANCE.—The Sec-  
10 retary shall ensure the expansion through the United  
11 States Citizenship and Immigration Services of public-pri-  
12 vate partnerships that facilitate pro bono counseling and  
13 legal assistance for asylum seekers awaiting a credible fear  
14 of persecution interview, as a continuation of existing pro-  
15 grams, such as the pilot program developed in Arlington,  
16 Virginia by the United States Citizenship and Immigra-  
17 tion Services.

18 **SEC. 6. CONDITIONS OF DETENTION.**

19 (a) IN GENERAL.—The Secretary shall ensure that  
20 standards governing conditions and procedures at deten-  
21 tion facilities are fully implemented and enforced, and that  
22 all detention facilities comply with the standards.

23 (b) PROCEDURES AND STANDARDS.—The Secretary  
24 shall promulgate new standards, or modify existing deten-  
25 tion standards, to improve conditions in detention facili-

1 ties. The improvements shall address at a minimum the  
2 following policies and procedures:

3 (1) FAIR AND HUMANE TREATMENT.—Proce-  
4 dures to ensure that detainees are not subject to de-  
5 grading or inhumane treatment such as physical  
6 abuse, sexual abuse or harassment, or arbitrary pun-  
7 ishment.

8 (2) LIMITATIONS ON SOLITARY CONFINEMENT.—Procedures limiting the use of solitary con-  
9 finement, shackling, and strip searches of detainees  
10 to situations where the use of such techniques is ne-  
11 cessitated by security interests or other extraor-  
12 dinary circumstances.

13 (3) INVESTIGATION OF GRIEVANCES.—Proce-  
14 dures for the prompt and effective investigation of  
15 grievances raised by detainees.

16 (4) ACCESS TO TELEPHONES.—Procedures per-  
17 mitting detainees sufficient access to telephones, and  
18 the ability to contact, free of charge, legal represent-  
19 atives, the immigration courts, the Board of Immi-  
20 gration Appeals, and the Federal courts through  
21 confidential toll-free numbers.

22 (5) LOCATION OF FACILITIES.—Location of de-  
23 tention facilities, to the extent practicable, near  
24

1 sources of free or low-cost legal representation with  
2 expertise in asylum or immigration law.

3 (6) PROCEDURES GOVERNING TRANSFERS OF  
4 DETAINEES.—Procedures governing the transfer of a  
5 detainee that take into account—

6 (A) the detainee’s access to legal rep-  
7 resentatives; and

8 (B) the proximity of the facility to the  
9 venue of the asylum or removal proceeding.

10 (7) TRANSLATION CAPABILITIES.—The employ-  
11 ment of detention facility staff that, to the extent  
12 practicable, are qualified in the languages rep-  
13 resented in the population of detainees at a deten-  
14 tion facility, and the provision of alternative trans-  
15 lation services when necessary.

16 (8) RECREATIONAL PROGRAMS AND ACTIVI-  
17 TIES.—Daily access to indoor and outdoor rec-  
18 reational programs and activities.

19 (c) QUALITY OF MEDICAL CARE.—

20 (1) IN GENERAL.—The Secretary shall ensure  
21 that prompt and adequate medical care is provided  
22 at no cost to detainees, including dental care, eye  
23 care, mental health care, and where appropriate, in-  
24 dividual and group counseling, medical dietary

1 needs, and other medically necessary specialized  
2 care.

3 (2) MEDICAL FACILITIES.—The Secretary shall  
4 ensure that medical facilities in all detention facili-  
5 ties maintain current accreditation by the National  
6 Commission on Correctional Health Care (NCCHC).

7 (3) MEDICAL RECORDS.—The Secretary shall  
8 ensure that complete medical records are maintained  
9 for every detainee, and that the records are made  
10 available upon request to the detainee, his legal rep-  
11 resentative, or other authorized individuals.

12 (d) SPECIAL STANDARDS FOR NONCRIMINAL DE-  
13 TAINÉES.—The Secretary shall promulgate new stand-  
14 ards, or modifications to existing standards, that—

15 (1) recognize the distinctions between persons  
16 with criminal convictions or a history of violent be-  
17 havior and all other detainees; and

18 (2) ensure that procedures and conditions of  
19 detention are appropriate for a noncriminal, non-  
20 violent population.

21 (e) SPECIAL STANDARDS FOR VULNERABLE POPU-  
22 LATIONS.—The Secretary shall promulgate new stand-  
23 ards, or modifications to existing standards, that—

24 (1) recognize the unique needs of asylum seek-  
25 ers, victims of torture and trafficking, families with

1 children, detainees who do not speak English, de-  
2 tainees with special religious, cultural or spiritual  
3 considerations, and other vulnerable populations;  
4 and

5 (2) ensure that procedures and conditions of  
6 detention are appropriate for the populations listed  
7 in this subsection.

8 (f) TRAINING OF PERSONNEL.—

9 (1) IN GENERAL.—The Secretary shall ensure  
10 that personnel in detention facilities are given spe-  
11 cialized training to better understand and work with  
12 the population of detainees held at the facilities  
13 where such personnel work. The training should ad-  
14 dress the unique needs of—

15 (A) asylum seekers;

16 (B) victims of torture or other trauma; and

17 (C) other vulnerable populations.

18 (2) SPECIALIZED TRAINING.—The training re-  
19 quired by this subsection shall be designed to better  
20 enable personnel to work with detainees from dif-  
21 ferent countries, and detainees who cannot speak  
22 English. The training shall emphasize that many de-  
23 tainees have no criminal records and are being held  
24 for civil violations.

1 **SEC. 7. OFFICE OF DETENTION OVERSIGHT.**

2 (a) ESTABLISHMENT OF THE OFFICE.—

3 (1) IN GENERAL.—There is established within  
4 the Department an Office of Detention Oversight (in  
5 this section referred to as the “Office”).

6 (2) HEAD OF THE OFFICE.—The head of the  
7 Office shall be an Administrator who shall be ap-  
8 pointed by, and shall report to, the Secretary.

9 (3) SCHEDULE.—The Office shall be estab-  
10 lished and the Administrator of the Office appointed  
11 not later than 180 days after the date of the enact-  
12 ment of this Act.

13 (b) RESPONSIBILITIES OF THE OFFICE.—

14 (1) INSPECTIONS OF DETENTION CENTERS.—  
15 The Administrator of the Office shall—

16 (A) undertake frequent and unannounced  
17 inspections of all detention facilities;

18 (B) develop a procedure for any detainee  
19 or the detainee’s representative to file a written  
20 complaint directly with the Office; and

21 (C) report to the Secretary and to the As-  
22 sistant Secretary of Homeland Security for  
23 U.S. Immigration and Customs Enforcement all  
24 findings of a detention facility’s noncompliance  
25 with detention standards.

1           (2) INVESTIGATIONS.—The Administrator of  
2 the Office shall—

3           (A) initiate investigations, as appropriate,  
4 into allegations of systemic problems at deten-  
5 tion facilities, incidents that constitute serious  
6 violations of detention standards, or other mat-  
7 ters related to mistreatment of detainees;

8           (B) report to the Secretary and the Assist-  
9 ant Secretary of Homeland Security for U.S.  
10 Immigration and Customs Enforcement the re-  
11 sults of all investigations; and

12           (C) refer matters, where appropriate, for  
13 further action to—

14                   (i) the Department of Justice;

15                   (ii) the Office of the Inspector Gen-  
16 eral of the Department;

17                   (iii) the Office of Civil Rights and  
18 Civil Liberties of the Department; or

19                   (iv) any other relevant office or agen-  
20 cy.

21           (3) REPORT TO CONGRESS.—

22           (A) IN GENERAL.—The Administrator of  
23 the Office shall submit to the Secretary, the  
24 Committee on the Judiciary and the Committee  
25 on Homeland Security and Governmental Af-

1           fairs of the Senate, and the Committee on the  
2           Judiciary and the Committee on Homeland Se-  
3           curity of the House of Representatives an an-  
4           nual report on the Administrator's findings on  
5           detention conditions and the results of the in-  
6           vestigations carried out by the Administrator.

7           (B) CONTENTS OF REPORT.—Each report  
8           required by subparagraph (A) shall include—

9                   (i) a description of the actions to rem-  
10                  edy findings of noncompliance or other  
11                  problems that are taken by the Secretary  
12                  or the Assistant Secretary of Homeland  
13                  Security for U.S. Immigration and Cus-  
14                  toms Enforcement, and each detention fa-  
15                  cility found to be in noncompliance; and

16                   (ii) information regarding whether  
17                  such actions were successful and resulted  
18                  in compliance with detention standards.

19           (4) REVIEW OF COMPLAINTS BY DETAINEES.—

20           The Administrator of the Office shall establish pro-  
21           cedures to receive and review complaints of viola-  
22           tions of the detention standards promulgated by the  
23           Secretary. The procedures shall protect the anonym-  
24           ity of the claimant, including detainees, employees,  
25           or others, from retaliation.

1 (c) COOPERATION WITH OTHER OFFICES AND  
2 AGENCIES.—Whenever appropriate, the Administrator of  
3 the Office shall cooperate and coordinate its activities  
4 with—

5 (1) the Office of the Inspector General of the  
6 Department;

7 (2) the Office of Civil Rights and Civil Liberties  
8 of the Department;

9 (3) the Privacy Officer of the Department;

10 (4) the Civil Rights Division of the Department  
11 of Justice; or

12 (5) any other relevant office or agency.

13 (d) DEATHS OF DETAINEES.—The Secretary shall  
14 ensure that—

15 (1) all deaths of detainees and other aliens in  
16 the Department's custody, or other deaths related to  
17 operations or actions of employees of U.S. Immigra-  
18 tion and Customs Enforcement or U.S. Customs and  
19 Border Protection, are reported to—

20 (A) the Office of Detention Oversight, if  
21 the death occurred in a detention facility;

22 (B) the Office of the Inspector General of  
23 the Department;

24 (C) the legal representative of the deceased  
25 alien, if the Department is on notice that a rep-

1           representative has been retained on the alien's be-  
2           half;

3           (D) the immediate family of the deceased  
4           alien, if the Department has contact informa-  
5           tion for an immediate family member; and

6           (E) relevant State and local government  
7           officials, including the coroner and the local law  
8           enforcement agency with jurisdiction in the lo-  
9           cation where the death occurred;

10          (2) a thorough investigation is conducted into  
11          each death by—

12                 (A) the Office of Detention Oversight;

13                 (B) the Office of the Inspector General of  
14                 the Department; or

15                 (C) another appropriate office with inves-  
16                 tigative authority in the Department or other  
17                 Federal agency; and

18          (3) a report describing the results of the inves-  
19          tigation into each death is provided to—

20                 (A) the Secretary;

21                 (B) the Committee on the Judiciary and  
22                 Committee on Homeland Security and Govern-  
23                 mental Affairs of the Senate; and

1 (C) the Committee on the Judiciary and  
2 the Committee on Homeland Security of the  
3 House of Representatives.

4 **SEC. 8. SECURE ALTERNATIVES PROGRAM.**

5 (a) ESTABLISHMENT OF PROGRAM.—The Secretary  
6 shall establish a secure alternatives program under which  
7 an alien who has been detained may be released under en-  
8 hanced supervision to prevent the alien from absconding  
9 and to ensure that the alien makes appearances related  
10 to such detention.

11 (b) PROGRAM REQUIREMENTS.—

12 (1) NATIONWIDE IMPLEMENTATION.—The Sec-  
13 retary shall facilitate the development of the secure  
14 alternatives program on a nationwide basis, as a  
15 continuation of existing pilot programs such as the  
16 Intensive Supervision Appearance Program devel-  
17 oped by the Department.

18 (2) UTILIZATION OF ALTERNATIVES.—The se-  
19 cure alternatives program shall utilize a continuum  
20 of alternatives based on the alien's need for super-  
21 vision, including placement of the alien with an indi-  
22 vidual or organizational sponsor, or in a supervised  
23 group home.

24 (3) ALIENS ELIGIBLE FOR SECURE ALTER-  
25 NATIVES PROGRAM.—

1           (A) IN GENERAL.—Aliens who would oth-  
2           erwise be subject to detention based on a con-  
3           sideration of the release criteria in section  
4           236(b)(2) of the Immigration and Nationality  
5           Act, or who are released pursuant to section  
6           236(e)(2) of such Act, shall be considered for  
7           the secure alternatives program.

8           (B) DESIGN OF PROGRAMS.—Secure alter-  
9           natives programs shall be designed to ensure  
10          sufficient supervision of the population de-  
11          scribed in subparagraph (A).

12          (4) CONTRACTS.—The Secretary shall enter  
13          into contracts with qualified nongovernmental enti-  
14          ties to implement the secure alternatives program.

15          (5) OTHER CONSIDERATIONS.—In designing  
16          such program, the Secretary shall—

17                (A) consult with relevant experts; and

18                (B) consider programs that have proven  
19                successful in the past, including the Appearance  
20                Assistance Program developed by the Vera In-  
21                stitute and the Intensive Supervision Appear-  
22                ance Program.

1 **SEC. 9. LESS RESTRICTIVE DETENTION FACILITIES.**

2 (a) CONSTRUCTION.—The Secretary shall facilitate  
3 the construction or use of secure but less restrictive deten-  
4 tion facilities.

5 (b) CRITERIA.—In developing detention facilities pur-  
6 suant to this section, the Secretary shall—

7 (1) consider the design, operation, and condi-  
8 tions of existing secure but less restrictive detention  
9 facilities, such as the Department’s detention facili-  
10 ties in Broward County, Florida, and Berks County,  
11 Pennsylvania;

12 (2) to the extent practicable, construct or use  
13 detention facilities where—

14 (A) movement within and between indoor  
15 and outdoor areas of the facility is subject to  
16 minimal restrictions;

17 (B) detainees have ready access to social,  
18 psychological, and medical services;

19 (C) detainees with special needs, including  
20 those who have experienced trauma or torture,  
21 have ready access to services and treatment ad-  
22 dressing their needs;

23 (D) detainees have ready access to pro-  
24 grams and recreation;

1 (E) detainees are permitted contact visits  
2 with legal representatives and family members;  
3 and

4 (F) special facilities are provided to fami-  
5 lies with children.

6 (c) FACILITIES FOR FAMILIES WITH CHILDREN.—  
7 For situations where release or secure alternatives pro-  
8 grams are not an option, the Secretary shall, to the extent  
9 practicable, ensure that special detention facilities are spe-  
10 cifically designed to house parents with their minor chil-  
11 dren, including ensuring that—

12 (1) procedures and conditions of detention are  
13 appropriate for families with minor children; and

14 (2) living and sleeping quarters for children  
15 under 14 years of age are not physically separated  
16 from at least 1 of the child's parents.

17 (d) PLACEMENT IN NONPUNITIVE FACILITIES.—  
18 Among the factors to be considered with respect to placing  
19 a detainee in a less restrictive facility is whether the de-  
20 tainee is—

- 21 (1) an asylum seeker;  
22 (2) part of a family with minor children;  
23 (3) a member of a vulnerable population; or  
24 (4) a nonviolent, noncriminal detainee.

