

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
JACKSON-LEE OF TEXAS, OR HER DESIGNEE,
DEBATABLE FOR 10 MINUTES:

AMENDMENT TO H.R. 4437
OFFERED BY MS. JACKSON-LEE OF TEXAS
(Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005)

Amend section 402 to read as follows:

1 **SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF**
2 **DETENTION FACILITIES.**

3 (a) IN GENERAL.—Subject to the availability of ap-
4 propriations, the Secretary of Homeland Security shall
5 fully utilize—

6 (1) all available detention facilities operated or
7 contracted by the Department of Homeland Secu-
8 rity; and

9 (2) all possible options to cost effectively in-
10 crease available detention capacities, including the
11 use of temporary detention facilities, the use of
12 State and local correctional facilities, private space,
13 and secure alternatives to detention (in accordance
14 with subsection (b)).

15 (b) SECURE ALTERNATIVES TO DETENTION PRO-
16 GRAM.—

17 (1) NATURE OF THE PROGRAM.—For purposes
18 of this section, the secure alternatives to detention



1 referred to in subsection (a) is a program under
2 which eligible aliens are released to the custody of
3 suitable individual or organizational sponsors who
4 will supervise them, use appropriate safeguards to
5 prevent them from absconding, and ensure that they
6 make required appearances.

7 (2) PROGRAM DEVELOPMENT.—The program
8 shall be developed in accordance with the following
9 guidelines:

10 (A) The Secretary shall design the pro-
11 gram in consultation with nongovernmental or-
12 ganizations and academic experts in both the
13 immigration and the criminal justice fields.
14 Consideration should be given to methods that
15 have proven successful in appearance assistance
16 programs, such as the appearance assistance
17 program developed by the Vera Institute and
18 the Department of Homeland Security's Inten-
19 sive Supervision Appearance Program.

20 (B) The program shall utilize a continuum
21 of alternatives based on the alien's need for su-
22 pervision, including placement of the alien with
23 an individual or organizational sponsor, a su-
24 pervised group home, or in a supervised, non-



1 penal community setting that has guards sta-
2 tioned along its perimeter.

3 (C) The Secretary shall enter into con-
4 tracts with nongovernmental organizations and
5 individuals to implement the secure alternatives
6 to detention program.

7 (c) ELIGIBILITY AND OPERATIONS.—

8 (1) SELECTION OF PARTICIPANTS.—The Sec-
9 retary shall select aliens to participate in the pro-
10 gram from designated groups specified in paragraph
11 (4) if the Secretary determines that such aliens are
12 not flight risks or dangers to the community.

13 (2) VOLUNTARY PARTICIPATION.—An alien's
14 participation in the program is voluntary and shall
15 not confer any rights or benefits to the alien under
16 the Immigration and Nationality Act (8 U.S.C. 1101
17 et seq.).

18 (3) LIMITATION ON PARTICIPATION.—

19 (A) IN GENERAL.—Only aliens who are in
20 expedited removal proceedings under section
21 236 of the Immigration and Nationality Act (8
22 U.S.C. 1226) may participate in the program.

23 (B) RULES OF CONSTRUCTION.—

24 (i) ALIENS APPLYING FOR ASYLUM.—
25 Aliens who have established a credible fear



1 of persecution and have been referred to
2 the Executive Office for Immigration Re-
3 view for an asylum hearing shall not be
4 considered to be in expedited removal pro-
5 ceedings and the custody status of such
6 aliens after service of a Notice to Appear
7 shall be determined in accordance with the
8 procedures governing aliens in removal
9 proceedings under section 240 of such Act
10 (8 U.S.C. 1229a).

11 (ii) UNACCOMPANIED ALIEN CHIL-
12 DREN.—Unaccompanied alien children (as
13 defined in section 462(g)(2) of the Home-
14 land Security Act (6 U.S.C. 279(g)(2)))
15 shall be considered to be in the care and
16 exclusive custody of the Department of
17 Health and Human Services and shall not
18 be subject to expedited removal and shall
19 not be permitted to participate in the pro-
20 gram.

21 (4) DESIGNATED GROUPS.—The designated
22 groups referred to in paragraph (1) are the fol-
23 lowing:



1 (A) Alien parents who are being detained
2 with one or more of their children, and their de-
3 tained children.

4 (B) Aliens who have serious medical or
5 mental health needs.

6 (C) Aliens who are mentally retarded or
7 autistic.

8 (D) Pregnant alien women.

9 (E) Elderly aliens who are over the age of
10 65.

11 (F) Aliens placed in expedited removal pro-
12 ceedings after being rescued from trafficking or
13 criminal operations by Government authorities.

14 (G) Other groups designated in regulations
15 promulgated by the Secretary.

16 (5) IMPLEMENTING REGULATIONS.—Not later
17 than 180 days after the date of the enactment of
18 this Act, the Secretary shall promulgate regulations
19 to implement the secure alternatives to detention
20 program and to standardize the care and treatment
21 of aliens in immigration custody based on the Deten-
22 tion Operations Manual of the Department of
23 Homeland Security.

24 (6) DECISIONS REGARDING PROGRAM NOT RE-
25 VIEWABLE.—The decisions of the Secretary regard-



1 ing when to utilize the program and to what extent
2 and the selection of aliens to participate in the pro-
3 gram shall not be subject to administrative or judi-
4 cial review.

5 (d) REPORTING REQUIREMENTS.—Not later than
6 180 days after the date of the enactment of this Act and
7 annually thereafter, the Secretary shall submit to the
8 Committee on Homeland Security of the House of Rep-
9 resentatives, the Committee on the Judiciary of the House
10 of Representatives, the Committee on Homeland Security
11 and Governmental Affairs of the Senate, and the Com-
12 mittee on the Judiciary of the Senate a report that details
13 all policies, regulations, and actions taken to comply with
14 the provisions in this section, including maximizing deten-
15 tion capacity and increasing the cost-effectiveness of de-
16 tention by implementing the secure alternatives to deten-
17 tion program, and a description of efforts taken to ensure
18 that all aliens in expedited removal proceedings are resid-
19 ing under conditions that are safe, secure, and healthy.

20 (e) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary of
22 Homeland Security such sums as may be necessary to
23 carry out this section. Amounts appropriated pursuant to
24 this section shall remain available until expended.

