

116TH CONGRESS
1ST SESSION

S. 2113

To protect the health and safety of children in immigration detention, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2019

Mr. MERKLEY (for himself, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. DURBIN, Mrs. MURRAY, Ms. HIRONO, Mr. COONS, Ms. KLOBUCHAR, Mr. LEAHY, Ms. CANTWELL, Mr. REED, Mr. BENNET, Ms. BALDWIN, Mr. SANDERS, Mr. VAN HOLLEN, Ms. WARREN, Mr. MENENDEZ, Mr. CARDIN, Mr. WYDEN, Mr. SCHATZ, Ms. CORTEZ MASTO, Mr. WHITEHOUSE, Ms. ROSEN, Mr. BLUMENTHAL, Mr. MARKEY, Mrs. GILLIBRAND, Mr. WARNER, Mr. KAINE, Ms. HARRIS, Mr. MURPHY, Ms. DUCKWORTH, Ms. HASSAN, Ms. SMITH, Mrs. SHAHEEN, Mr. BOOKER, Mr. CASEY, Mr. KING, Ms. STABENOW, Mr. BROWN, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the health and safety of children in immigration
detention, 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; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Cruelty to Migrant Children Act”.

1 (b) PURPOSE.—The purpose of this Act is to reaffirm
2 that—

3 (1) the Federal Government is responsible for
4 the health, safety, and well-being of children and
5 families in the custody of the Federal Government;

6 (2) children and families should only be in the
7 custody of the Federal Government for as little time
8 as possible; and

9 (3) during any period in which children or fami-
10 lies are in the custody of the Federal Government—

11 (A) they should be treated with dignity, re-
12 spect, and care; and

13 (B) every effort should be made to mini-
14 mize trauma, isolation, and conditions resem-
15 bling prison.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) ALIEN.—The term “alien” has the meaning
19 given the term in section 101(a) of the Immigration
20 and Nationality Act (8 U.S.C. 1101(a)).

21 (2) APPROPRIATE COMMITTEES OF CON-
22 GRESS.—The term “appropriate committees of Con-
23 gress” means—

24 (A) the Committee on Appropriations, the
25 Committee on Homeland Security and Govern-

1 mental Affairs, the Committee on Health, Edu-
2 cation, Labor, and Pensions, and the Com-
3 mittee on the Judiciary of the Senate; and

4 (B) the Committee on Appropriations, the
5 Committee on Homeland Security, the Com-
6 mittee on Education and Labor, and the Com-
7 mittee on the Judiciary of the House of Rep-
8 resentatives.

9 (3) CHILD.—The term “child” means an indi-
10 vidual who—

11 (A) has not attained 18 years of age; and

12 (B) does not have permanent immigration
13 status in the United States.

14 (4) DETAINED INDIVIDUAL.—The term “de-
15 tained individual” means any individual, including
16 an unaccompanied alien child, held in immigration
17 detention under the Immigration and Nationality
18 Act (8 U.S.C. 1101 et seq.).

19 (5) INFLUX.—The term “influx” means a pe-
20 riod during which—

21 (A) not less than 95 percent of the avail-
22 able beds in permanent shelters for unaccom-
23 panied alien children are occupied; and

24 (B) the average length of care for unac-
25 companied alien children in custody of the Sec-

1 retary of Health and Human Services exceeds
2 35 days.

3 (6) INFLUX CARE FACILITY.—The term “influx
4 care facility” means an Office of Refugee Resettle-
5 ment facility that is operated to provide temporary
6 emergency shelter and services for unaccompanied
7 alien children during an influx or emergency.

8 (7) OFFICE OF REFUGEE RESETTLEMENT FA-
9 CILITY.—The term “Office of Refugee Resettlement
10 facility” means any facility at which unaccompanied
11 alien children are in the care and custody of the Sec-
12 retary of Health and Human Services.

13 (8) STANDARD CARE FACILITY.—The term
14 “standard care facility” means an Office of Refugee
15 Resettlement facility—

16 (A) that provides residential care for unac-
17 companied alien children; and

18 (B) at which all programmatic components
19 are administered onsite and in the least restric-
20 tive environment.

21 (9) UNACCOMPANIED ALIEN CHILD.—The term
22 “unaccompanied alien child” has the meaning given
23 the term in section 462(g) of the Homeland Security
24 Act of 2002 (6 U.S.C. 279(g)).

1 **SEC. 3. ENSURING THAT FAMILIES REMAIN TOGETHER.**

2 (a) LIMITATION ON THE SEPARATION OF FAMI-
3 LIES.—

4 (1) IN GENERAL.—An agent or officer of U.S.
5 Customs and Border Protection shall not remove a
6 child from his or her parent or legal guardian at or
7 near a port of entry or within 100 miles of the bor-
8 der of the United States unless one of the following
9 situations has occurred:

10 (A) A State court, authorized under State
11 law—

12 (i) terminates the rights of the parent
13 or legal guardian;

14 (ii) determines that it is in the best
15 interests of the child to be removed from
16 the parent or legal guardian, in accordance
17 with the Adoption and Safe Families Act
18 of 1997 (Public Law 105–89); or

19 (iii) makes any similar determination
20 that is legally authorized under State law.

21 (B) An official from the State or county
22 child welfare agency with expertise in child
23 trauma and development determines that it is
24 in the best interests of the child to be removed
25 from the parent or legal guardian because the
26 child is—

1 (i) in danger of abuse or neglect at
2 the hands of the parent or legal guardian;
3 or

4 (ii) a danger to himself or herself or
5 to others.

6 (C) The Chief Patrol Agent or the Area
7 Port Director, in his or her official and
8 undelegated capacity, authorizes separation, on
9 the recommendation by an agent or officer of
10 U.S. Customs and Border Protection, based on
11 a finding that—

12 (i) the child is a victim of trafficking
13 or is at significant risk of becoming a vic-
14 tim of trafficking;

15 (ii) there is a strong likelihood that
16 the adult is not the parent or legal guard-
17 ian of the child; or

18 (iii) the child is in danger of abuse or
19 neglect at the hands of the parent or legal
20 guardian, or is a danger to himself or her-
21 self or to others.

22 (2) PROHIBITION ON SEPARATION.—A Federal
23 agency may not remove a child from a parent or
24 legal guardian solely for the policy goal of—

1 (A) deterring individuals from migrating to
2 the United States; or

3 (B) promoting compliance with civil immi-
4 gration law.

5 (3) DOCUMENTATION REQUIRED.—The Sec-
6 retary shall ensure that a separation based on a sit-
7 uation described in paragraph (1)(C)—

8 (A) is documented in writing; and

9 (B) includes—

10 (i) the reason for such separation; and

11 (ii) the stated evidence for such sepa-
12 ration.

13 (b) RECOMMENDATIONS FOR SEPARATION BY
14 AGENTS OR OFFICERS.—

15 (1) IN GENERAL.—Not later than 180 days
16 after the date of the enactment of this Act, the Sec-
17 retary, in consultation with the Secretary of Health
18 and Human Services, shall develop training and
19 guidance, with an emphasis on the best interests of
20 the child, on childhood trauma, attachment, and
21 child development, for use by the agents and officers
22 of U.S. Customs and Border Protection, so as to
23 standardize separations authorized under subsection
24 (a)(1)(C).

1 (2) ANNUAL REVIEW.—Not less frequently than
2 annually, the Secretary of Health and Human Serv-
3 ices shall—

4 (A) review the guidance developed under
5 paragraph (1); and

6 (B) make recommendations to the Sec-
7 retary to ensure that such guidance conforms to
8 current evidence and best practices in child wel-
9 fare, child development, and childhood trauma.

10 (3) REQUIREMENT.—The guidance developed
11 under paragraph (1) shall incorporate the presump-
12 tions described in subsection (c).

13 (4) ADDITIONAL REQUIREMENTS.—

14 (A) EVIDENCE-BASED.—The guidance and
15 training developed under this subsection shall
16 incorporate evidence-based practices.

17 (B) TRAINING REQUIRED.—

18 (i) INITIAL TRAINING.—All agents
19 and officers of U.S. Customs and Border
20 Protection, on hire, and annually there-
21 after, shall complete training on adherence
22 to the guidance developed under this sub-
23 section.

24 (ii) ANNUAL TRAINING.—All Chief
25 Patrol Agents and Area Port Directors, on

1 hire, and annually thereafter, shall com-
 2 plete—

3 (I) training on adherence to the
 4 guidance developed under this sub-
 5 section; and

6 (II) 90 minutes of child welfare
 7 practice training that is evidence-
 8 based and trauma-informed.

9 (c) PRESUMPTIONS.—The presumptions described in
 10 this subsection are the following:

11 (1) FAMILY UNITY.—There shall be a strong
 12 presumption in favor of family unity.

13 (2) SIBLINGS.—To the maximum extent prac-
 14 ticable, the Secretary shall ensure that sibling
 15 groups remain intact.

16 (3) DETENTION.—There is a presumption that
 17 detention is not in the best interests of families and
 18 children.

19 (d) REQUIRED POLICY FOR LOCATING SEPARATED
 20 CHILDREN.—

21 (1) IN GENERAL.—Not later than 180 days
 22 after the date of the enactment of this Act, the Sec-
 23 retary shall publish final public guidance that de-
 24 scribes, with specificity, the manner in which a par-
 25 ent or legal guardian may locate a child who was

1 separated from the parent or legal guardian under
2 subsection (a)(1).

3 (2) CONSULTATION.—In developing such public
4 guidance, the Secretary shall consult with the Sec-
5 retary of Health and Human Services, immigrant
6 advocacy organizations, child welfare organizations,
7 and State child welfare agencies.

8 (3) WRITTEN NOTIFICATION.—The Secretary
9 shall provide each parent or legal guardian who was
10 separated from a child under subsection (a)(1) with
11 written notice of such public guidance.

12 (4) LANGUAGE ACCESS.—Such public guidance
13 shall be—

14 (A) available in English and Spanish; and

15 (B) at the request of the parent or legal
16 guardian, made available in the language or
17 manner that is understandable by the parent or
18 legal guardian.

19 (e) REQUIRED INFORMATION FOR SEPARATED FAMI-
20 LIES.—Not less frequently than monthly, the Secretary
21 shall provide the parent or legal guardian of a child who
22 was separated—

23 (1) a status report on the monthly activities of
24 the child;

1 (2) information about the education and health
2 of the child, including any medical treatment pro-
3 vided to the child or medical treatment rec-
4 ommended for the child;

5 (3) information about changes to the immigra-
6 tion status of the child; and

7 (4) any other information about the child, de-
8 signed to promote and maintain family reunification,
9 as the Secretary determines in his or her discretion.

10 (f) ANNUAL REPORT ON FAMILY SEPARATION.—Not
11 later than one year after the date of the enactment of this
12 Act, and annually thereafter, the Secretary shall submit
13 a report to the committees of jurisdiction that—

14 (1) describes each instance in which a child was
15 separated from a parent or legal guardian; and

16 (2) includes, for each such instance—

17 (A) the relationship of the adult and the
18 child;

19 (B) the age and gender of the adult and
20 child;

21 (C) the length of separation;

22 (D) whether the adult was charged with a
23 crime, and if the adult was charged with a
24 crime, the type of crime;

1 (E) whether the adult made a claim for
 2 asylum, expressed a fear to return, or applied
 3 for other immigration relief;

4 (F) whether the adult was prosecuted if
 5 charged with a crime and the associated out-
 6 come of such charges;

7 (G) the stated reason for, and evidence in
 8 support of, the separation;

9 (H) if the child was part of a sibling group
 10 at the time of separation, whether the sibling
 11 group has had physical contact and visitation;

12 (I) whether the child was rendered an un-
 13 accompanied alien child; and

14 (J) any other information, as determined
 15 by the Secretary.

16 (g) CLARIFICATION OF PARENTAL RIGHTS.—If a
 17 child is separated from a parent or legal guardian and a
 18 State court has not made a determination that the paren-
 19 tal rights have been terminated, there is a presumption
 20 that—

21 (1) the parental rights remain intact; and

22 (2) the separation does not constitute an af-
 23 firmative determination of abuse or neglect under
 24 Federal or State law.

25 (h) CLARIFICATION OF EXISTING LAW.—

1 (1) FEDERAL LAW.—Nothing in this section
2 may be interpreted to supersede or modify Federal
3 child welfare law, as applicable, including the Adop-
4 tion and Safe Families Act of 1997 (Public Law
5 105–89).

6 (2) STATE LAW.—Nothing in this section may
7 be interpreted to supersede or modify any State
8 child welfare law.

9 (i) GAO REPORT ON PROSECUTION OF ASYLUM
10 SEEKERS.—

11 (1) STUDY.—The Comptroller General of the
12 United States shall conduct a study on the prosecu-
13 tion of asylum seekers during the ten-year period
14 ending on the date of the enactment of this Act.

15 (2) ELEMENTS.—The study conducted under
16 paragraph (1) shall include the following:

17 (A) The total number of persons who
18 claimed fear of persecution, received a favorable
19 credible fear determination, and were referred
20 for prosecution.

21 (B) An overview and analysis of the
22 metrics used by the Department of Homeland
23 Security and the Department of Justice to
24 track the number of asylum seekers referred for
25 prosecution.

1 (C) The total number of asylum seekers
2 referred for prosecution, a breakdown and de-
3 scription of the criminal charges filed against
4 asylum seekers during such period, and a
5 breakdown and description of the convictions
6 secured.

7 (D) The total number of asylum seekers
8 who were separated from their children as a re-
9 sult of being referred for prosecution.

10 (E) A description of—

11 (i) the amounts spent on prosecuting
12 asylum seekers during such period;

13 (ii) the diversion of resources required
14 to prosecute asylum seekers; and

15 (iii) any costs imposed on States and
16 localities.

17 (F) The total number of asylum seekers
18 who—

19 (i) were referred for prosecution; and

20 (ii) were subject to immigration pro-
21 ceedings.

22 (G) The total number of asylum seekers
23 referred for prosecution who were deported be-
24 fore going through immigration proceedings.

1 (3) REPORT.—Not later than one year after the
2 date of the enactment of this Act, the Comptroller
3 General shall submit a report to Congress that de-
4 scribes the results of the study conducted under
5 paragraph (1).

6 (j) DEFINITIONS.—In this section:

7 (1) AGENT; OFFICER.—The terms “agent” and
8 “officer” include contractors of the Federal Govern-
9 ment.

10 (2) COMMITTEES OF JURISDICTION.—The term
11 “committees of jurisdiction” means—

12 (A) the Committee on the Judiciary and
13 the Committee on Health, Education, Labor,
14 and Pensions of the Senate; and

15 (B) the Committee on the Judiciary and
16 the Committee on Education and Labor of the
17 House of Representatives.

18 (3) DANGER OF ABUSE OR NEGLECT AT THE
19 HANDS OF THE PARENT OR LEGAL GUARDIAN.—The
20 term “danger of abuse or neglect at the hands of the
21 parent or legal guardian” shall not mean migrating
22 to or crossing the United States border.

23 (4) FINDING.—The term “finding” means an
24 individualized written assessment or screening by the
25 trained agent or officer that includes a consultation

1 with, and concurrence from, a child welfare spe-
 2 cialist, formalized as required under subsection
 3 (a)(3) and consistent with subsections (b), (c), and
 4 (g).

5 (5) SECRETARY.—The term “Secretary” means
 6 the Secretary of Homeland Security.

7 **SEC. 4. HEALTH AND SAFETY PROTECTIONS FOR DETAINED**
 8 **CHILDREN.**

9 (a) FLORES SETTLEMENT AGREEMENT.—

10 (1) IN GENERAL.—A family unit may be de-
 11 tained only in accordance with the holding in Flores
 12 v. Sessions et al. (9th Cir. July 5, 2017; C.D. CA;
 13 July 24, 2015) and the stipulated settlement agree-
 14 ment as filed in the United States District Court for
 15 the Central District of California on January 17,
 16 1997 (CV 85 4544 RJK), including all subsequent
 17 court decisions and interpretations (referred to in
 18 this section as the “Flores settlement agreement”).

19 (2) RULEMAKING.—Any regulation proposed or
 20 promulgated to supersede the Flores settlement
 21 agreement shall have no force or effect.

22 (3) RULE OF CONSTRUCTION.—Nothing in this
 23 Act may be construed—

1 (A) to affect the application of the Flores
 2 settlement agreement to unaccompanied alien
 3 children; or

4 (B) to abrogate the Flores settlement
 5 agreement.

6 (4) REVIEW OF DETENTION DETERMINA-
 7 TIONS.—The review of any determination by the
 8 Secretary of Homeland Security to detain an indi-
 9 vidual or a family unit under this subsection shall be
 10 in accordance with all other provisions of law, hold-
 11 ings (including any holding made in *Flores v. Ses-*
 12 *sions et al.* (9th Cir. July 5, 2017; C.D. CA; July
 13 24, 2015)), consent decrees, and settlement agree-
 14 ments (including the Flores settlement agreement).

15 (b) PROMPT MEDICAL ASSESSMENTS FOR DETAINED
 16 CHILDREN.—

17 (1) BODY TEMPERATURE CHECK ON INTAKE.—
 18 With respect to a child in the custody of the Sec-
 19 retary of Homeland Security, not later than one
 20 hour after the time at which the initial intake of
 21 such child is completed, the Secretary of Homeland
 22 Security shall ensure that the child receives a body
 23 temperature check.

24 (2) MEDICAL EVALUATION BY MEDICAL PRO-
 25 FESSIONAL WITH PEDIATRIC TRAINING.—Not later

1 than 48 hours after the time at which a child is
 2 taken into the custody of the Secretary of Homeland
 3 Security, the Secretary shall ensure that the child
 4 receives a medical evaluation by a medical profes-
 5 sional with specialized pediatric training—

6 (A) to determine whether the child has any
 7 health or safety concerns; and

8 (B) that includes a measurement of all
 9 vital signs and a body temperature check.

10 (3) SPECIALIZED TRAINING FOR PUBLIC
 11 HEALTH SERVICE COMMISSIONED CORPS.—The Sec-
 12 retary of Homeland Security shall enter into a
 13 memorandum of understanding with the Public
 14 Health Service Commissioned Corps and the Sec-
 15 retary of Health and Human Services to provide
 16 specialized training relating to migration for the
 17 Public Health Service Commissioned Corps to sup-
 18 port deployment at Office of Refugee Resettlement
 19 facilities and U.S. Customs and Border Protection
 20 facilities during any period in which high numbers
 21 of unaccompanied alien children and families arrive
 22 at the Southern border.

23 (c) DETENTION STANDARDS FOR U.S. CUSTOMS AND
 24 BORDER PROTECTION FACILITIES.—With respect to any

1 U.S. Customs and Border Protection facility, the Sec-
2 retary of Homeland Security shall ensure that—

3 (1) the facility—

4 (A) complies with the standards of the
5 U.S. Customs and Border Protection entitled
6 “National Standards on Transport, Escort, De-
7 tention, and Search” issued in October 2015;

8 (B) remains at an appropriate tempera-
9 ture;

10 (C) is properly ventilated;

11 (D) has adequate supervision and other
12 safeguards to protect detained children from
13 other detained individuals; and

14 (E) has a child welfare specialist on staff,
15 or has prompt access to a child welfare spe-
16 cialist, for purposes of making a finding under
17 section 3(a)(1)(C);

18 (2) each detained individual is provided—

19 (A) not fewer than three healthy and nu-
20 tritious meals daily, in accordance with the
21 most recent dietary guidelines of the Depart-
22 ment of Agriculture, that—

23 (i) in the case of an adult who is not
24 pregnant or breastfeeding, provide a total
25 of not fewer than 2,000 calories; or

1 (ii) in the case of a detained child or
2 an individual who is pregnant or
3 breastfeeding, meet, as applicable—

4 (I) the nutrition standards for
5 the school lunch program authorized
6 under the Richard B. Russell National
7 School Lunch Act (42 U.S.C. 1751 et
8 seq.) and the school breakfast pro-
9 gram established by section 4 of the
10 Child Nutrition Act of 1966 (42
11 U.S.C. 1773); or

12 (II) the nutrition standards es-
13 tablished under the special supple-
14 mental nutrition program for women,
15 infants, and children established by
16 section 17 of the Child Nutrition Act
17 of 1966 (42 U.S.C. 1786);

18 (B) not less than 1 gallon of clean drink-
19 ing water daily, including age-appropriate liq-
20 uids;

21 (C) regular access to hygiene products, in-
22 cluding—

23 (i) soap;

24 (ii) a toothbrush and toothpaste;

- 1 (iii) not fewer than one full change of
- 2 clothing;
- 3 (iv) a towel;
- 4 (v) toilet paper;
- 5 (vi) feminine hygiene products, as ap-
- 6 plicable;
- 7 (vii) prenatal vitamins, as applicable;
- 8 and
- 9 (viii) diaper changing materials, as
- 10 applicable, including—
- 11 (I) a clean diaper changing sta-
- 12 tion;
- 13 (II) diapers in the appropriate
- 14 size;
- 15 (III) diaper rash ointment;
- 16 (IV) baby wipes; and
- 17 (V) diaper disposal receptacles;
- 18 (D) regular access to showers, sinks, and
- 19 toilets; and
- 20 (E) an opportunity to contact any family
- 21 member with whom the detained individual was
- 22 apprehended; and
- 23 (3) in the case of a detained individual the pre-
- 24 scription medication of whom is confiscated on ap-
- 25 prehension, not later than six hours after the time

1 at which the detained individual arrives at a U.S.
2 Customs and Border Protection facility, a medical
3 professional, or in the case of a child, a medical pro-
4 fessional with pediatric training reviews such confis-
5 cation and makes a determination whether the medi-
6 cation shall be—

7 (A) kept by the detained individual in his
8 or her possession for regular use during deten-
9 tion;

10 (B) properly stored by U.S. Customs and
11 Border Protection officials, with appropriate ac-
12 cess for regular use by the detained individual
13 during detention; or

14 (C) stored with the personal property of
15 the detained individual.

16 (d) DETENTION STANDARDS FOR U.S. IMMIGRATION
17 AND CUSTOMS ENFORCEMENT.—The Secretary of Home-
18 land Security shall ensure the full compliance of each U.S.
19 Immigration and Customs Enforcement detention system
20 facility, including each contract facility and each local or
21 county jail operating under an intergovernmental service
22 agreement, with, at a minimum, the standards of U.S. Im-
23 migration and Customs Enforcement entitled “Perform-
24 ance-Based National Detention Standards 2011”, as re-
25 vised in December 2016.

1 (e) CARE AND CUSTODY STANDARDS FOR OFFICE OF
2 REFUGEE RESETTLEMENT FACILITIES.—

3 (1) NEW CONTRACTS.—On the maturation of
4 any existing contract to house unaccompanied alien
5 children, the Secretary of Health and Human Serv-
6 ices may only offer to extend or enter into a new
7 contract or cooperative agreement for the housing of
8 unaccompanied alien children with one or more non-
9 profit entities that are—

10 (A) licensed by the applicable State; and

11 (B) in compliance with Exhibit 1 of the
12 Flores settlement agreement, regardless of the
13 status of the underlying Flores settlement
14 agreement.

15 (2) PRIORITIZATION OF SMALL FACILITIES.—

16 The Secretary of Health and Human Services shall
17 prioritize the use of standard care facilities and in-
18 flux care facilities that house not more than 100 un-
19 accompanied alien children.

20 (3) LIMITATIONS ON USE OF INFLUX CARE FA-
21 CILITIES.—

22 (A) LENGTH OF CARE EXCEEDING 35
23 DAYS.—

24 (i) IN GENERAL.—In the case of an
25 influx, the Secretary of Health and Human

1 Services may not house one or more unac-
2 companied alien children in an influx care
3 facility for more than 30 days.

4 (ii) DAILY REPORTS.—

5 (I) IN GENERAL.—Not less fre-
6 quently than daily during an influx in
7 which one or more unaccompanied
8 alien children are housed in an influx
9 care facility, the Secretary of Health
10 and Human Services shall submit to
11 the appropriate committees of Con-
12 gress a daily report on efforts to re-
13 duce the average length of care of un-
14 accompanied alien children in the cus-
15 tody of the Secretary of Health and
16 Human Services.

17 (II) MATTERS TO BE IN-
18 CLUDED.—Each report under sub-
19 clause (I) shall include the following:

20 (aa) A detailed description
21 of any proposed—

22 (AA) policy with re-
23 spect to the care of unac-
24 companied alien children;
25 and

1 (BB) staffing increase
2 at an influx care facility.

3 (bb) With respect to the in-
4 flux, the mean and median num-
5 ber of days between—

6 (AA) the date on which
7 a family reunification appli-
8 cation is submitted for an
9 unaccompanied alien child;
10 and

11 (BB) the date on which
12 the Secretary of Health and
13 Human Services issues a de-
14 cision on such application.

15 (cc) The total number of
16 such applications granted.

17 (dd) The total number of
18 such applications denied.

19 (ee) A description of any ac-
20 tion considered but not taken
21 with respect to the care and cus-
22 tody of unaccompanied alien chil-
23 dren as a result of a conflict with
24 Federal or State law.

(B) TRANSFER.—The Secretary of Health and Human Services may transfer an unaccompanied alien child from a State-licensed standard care facility to an influx care facility solely for the purpose of—

(i) family reunification; or

(ii) placement with a sponsor that shall occur not later than 14 days after the date on which the unaccompanied alien child is transferred.

SEC. 5. RELEASE OF FAMILIES AND UNACCOMPANIED ALIEN CHILDREN FROM DETENTION.

(a) STAFF-TO-CHILD RATIOS FOR OFFICE OF REFUGEE RESETTLEMENT FACILITIES.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in collaboration with the Comptroller General of the United States, shall develop standards for recommended staff-to-child ratios for Federal field specialists and third-party case review coordinators at Office of Refugee Resettlement facilities.

(2) INTERIM STANDARD.—Beginning on the date of the enactment of this Act and ending on the date on which the standards under paragraph (1)

1 are implemented, the Secretary of Health and
2 Human Services shall ensure that any standard care
3 facility or influx care facility for unaccompanied
4 alien children maintains a staff-to-child ratio of not
5 fewer than—

6 (A) one Federal field specialist for every
7 50 unaccompanied alien children; and

8 (B) one third-party case review coordinator
9 for every 50 unaccompanied alien children.

10 (3) CASE LOAD LIMITATION.—The Secretary of
11 Health and Human Services shall establish a max-
12 imum case load for each case manager at an Office
13 of Refugee Resettlement facility that is not greater
14 than the lesser of—

15 (A) five new unaccompanied alien children
16 cases and a total of not more than eight active
17 cases each month; or

18 (B) the maximum number of children, as
19 required under applicable State law.

20 (4) SUPPLEMENTAL FUNDS.—The Secretary of
21 Health and Human Services shall authorize supple-
22 mental funds—

23 (A) to provide overtime compensation for
24 case managers at Office of Refugee Resettle-

1 ment facilities for extended work hours and
2 work days during an influx; and

3 (B) to hire additional staff to carry out
4 home study services relating to the placement of
5 unaccompanied alien children with sponsors on
6 release from custody.

7 (b) RESCISSION OF INFORMATION-SHARING AGREE-
8 MENT RELATING TO SPONSORS OF UNACCOMPANIED
9 ALIEN CHILDREN.—The Secretary of Health and Human
10 Services and the Secretary of Homeland Security shall re-
11 scind the memorandum of agreement entitled “Memo-
12 randum of Agreement Among the Office of Refugee Reset-
13 tlement of the U.S. Department of Health and Human
14 Services and U.S. Immigration and Customs Enforcement
15 and U.S. Customs and Border Protection of the U.S. De-
16 partment of Homeland Security Regarding Consultation
17 and Information Sharing in Unaccompanied Alien Chil-
18 dren Matters” dated April 13, 2018.

19 (c) EXPANSION OF FAMILY CASE MANAGEMENT
20 PROGRAM.—

21 (1) IN GENERAL.—The Secretary of Homeland
22 Security shall provide to the alternatives to deten-
23 tion division of U.S. Immigration and Customs En-
24 forcement, including the Family Case Management

1 Program, sufficient funds to cover the costs of each
2 individual who—

3 (A) has a pending immigration proceeding;
4 and
5 (B) is not subject to detention under sub-
6 section (d).

7 (2) CONTRACTS AUTHORIZED.—The Director of
8 U.S. Immigration and Customs Enforcement shall
9 offer to enter into one or more contracts with one
10 or more nonprofit service providers that, to the max-
11 imum extent practicable, have the capacity to pro-
12 vide evidence-based services required to operate an
13 alternatives to detention program for the least re-
14 strictive setting.

15 (3) PRIORITIZATION.—The Secretary of Home-
16 land Security shall ensure that any expenditure for
17 the Family Case Management Program is prioritized
18 over any other expenditure from the Alternatives to
19 Detention account.

20 (4) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated such sums
22 as may be necessary to carry out this subsection.

23 (d) IMMIGRATION DETENTION PRIORITIES.—

24 (1) IN GENERAL.—The Director of U.S. Immi-
25 gration and Customs Enforcement shall prioritize

the limited resources of U.S. Immigration and Customs Enforcement to detain aliens who pose—

(A) a threat to national security or public safety; or

(B) a risk of flight that cannot be mitigated by an alternative to detention.

(2) PRESUMPTION.—Except in extraordinary circumstances, such as a circumstance in which an alien is known to be a member of a terrorist organization or a transnational criminal organization, an alien shall not be detained if—

(A) the alien—

(i) is known to suffer from a serious physical or mental illness;

(ii) has a disability;

(iii) is elderly;

(iv) is pregnant or breastfeeding;

(v) is under 18 years of age; or

(vi) demonstrates that the alien is the primary caregiver of—

(I) a person under 18 years of

age; or

(II) an infirm person; or

(B) the detention of the alien is otherwise not in the public interest.

1 **SEC. 6. IMPROVEMENTS TO ASYLUM PROCEDURE.**

2 (a) STATEMENT OF POLICY ON CHILD ASYLUM
 3 SEEKERS.—It shall be the policy of the United States that
 4 no child may be delayed or prevented from crossing the
 5 Southern border at a port of entry for the purpose of ap-
 6 plying for asylum or any other applicable legal immigra-
 7 tion status.

8 (b) NONADVERSARIAL ASYLUM PROCESSING FOR
 9 CHILDREN.—The Secretary of Homeland Security shall
 10 rescind the memorandum of the U.S. Citizenship and Im-
 11 migration Services entitled “Updated Procedures for Asy-
 12 lum Applications Filed by Unaccompanied Alien Chil-
 13 dren”, issued May 31, 2019.

14 (c) MODIFICATION OF TERM “ASYLUM OFFICER” TO
 15 EXCLUDE OFFICERS OF U.S. CUSTOMS AND BORDER
 16 PROTECTION.—Section 235(b)(1)(E) of the Immigration
 17 and Nationality Act (8 U.S.C. 1225(b)(1)(E)) is amend-
 18 ed—

19 (1) in clause (i), by striking “, and” and insert-
 20 ing a semicolon;

21 (2) in clause (ii), by striking the period at the
 22 end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(iii) is employed by the Refugee,
 25 Asylum, and International Operations Di-

1 rectorate of the U.S. Citizenship and Im-
 2 migration Services.”.

3 (d) IMPROVING IMMIGRATION COURT EFFICIENCY
 4 AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL
 5 INFORMATION.—

6 (1) APPOINTMENT OF COUNSEL IN REMOVAL
 7 PROCEEDINGS; RIGHT TO REVIEW CERTAIN DOCU-
 8 MENTS IN REMOVAL PROCEEDINGS.—Section 240(b)
 9 of the Immigration and Nationality Act (8 U.S.C.
 10 1229a(b)) is amended—

11 (A) in paragraph (4)—

12 (i) in subparagraph (A)—

13 (I) by striking “, at no expense
 14 to the Government,”; and

15 (II) by striking the comma at the
 16 end and inserting a semicolon;

17 (ii) by redesignating subparagraphs
 18 (B) and (C) as subparagraphs (D) and
 19 (E), respectively;

20 (iii) by inserting after subparagraph
 21 (A) the following:

22 “(B) the Attorney General may appoint or
 23 provide counsel, at Government expense, to
 24 aliens in immigration proceedings;

“(C) the alien, or the alien’s counsel, not later than 7 days after receiving a notice to appear under section 239(a), shall receive a complete copy of the alien’s immigration file (commonly known as an ‘A-file’) in the possession of the Department of Homeland Security (other than documents protected from disclosure under section 552(b) of title 5, United States Code);”;
and

(iv) in subparagraph (D), as redesignated, by striking “this Act, and” and inserting “this Act; and”; and

(2) by adding at the end the following:

“(8) FAILURE TO PROVIDE ALIEN REQUIRED DOCUMENTS.—A removal proceeding may not proceed until the alien, or in the case of an alien who is represented by counsel, the alien’s counsel—

“(A) has received the documents required under paragraph (4)(C); and

“(B) has been provided at least 10 days to review and assess such documents.”.

(e) NONPROFIT RESPITE CENTERS.—Section 313 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11343) is amended—

(1) in subsection (a)—

1 (A) in paragraph (2), by striking “; and”
 2 and inserting a semicolon;

3 (B) in paragraph (3), by striking the pe-
 4 riod at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(4) to provide assistance to State and local
 7 governments and local nonprofit organizations that
 8 serve aliens (as defined in section 101(a) of the Im-
 9 migration and Nationality Act (8 U.S.C. 1101(a))
 10 released from the custody of the Secretary of Home-
 11 land Security to address the needs of communities
 12 that experience the arrival of a high number of asy-
 13 lum seekers.”; and

14 (2) by adding at the end the following:

15 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
 16 is authorized to be appropriated to the Director to award
 17 grants to the National Board to carry out subsection
 18 (a)(4) \$100,000,000 for fiscal year 2019 and each fiscal
 19 year thereafter.”.

20 **SEC. 7. ACCESS BY COUNSEL AT DETENTION FACILITIES.**

21 (a) IN GENERAL.—The Secretary of Homeland Secu-
 22 rity shall provide access to counsel for all aliens detained
 23 in a facility under the supervision of U.S. Immigration
 24 and Customs Enforcement, U.S. Customs and Border
 25 Protection, or the Department of Health and Human

1 Services, or in any private facility that contracts with the
 2 Federal Government to house, detain, or hold aliens.

3 (b) AUTHORIZATION OF APPROPRIATIONS FOR
 4 LEGAL ORIENTATION PROGRAM.—There is authorized to
 5 be appropriated to carry out the Legal Orientation Pro-
 6 gram of the Executive Office for Immigration Review
 7 \$55,000,000 for fiscal year 2019 and each fiscal year
 8 thereafter.

9 (c) CLARIFICATION REGARDING THE AUTHORITY OF
 10 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
 11 ALIENS IN IMMIGRATION PROCEEDINGS.—

12 (1) IN GENERAL.—Section 292 of the Immigra-
 13 tion and Nationality Act (8 U.S.C. 1362) is amend-
 14 ed to read as follows:

15 **“SEC. 292. RIGHT TO COUNSEL.**

16 “(a) IN GENERAL.— Except as provided in sub-
 17 sections (b) and (c), in any removal proceeding and in any
 18 appeal proceeding before the Attorney General from any
 19 such removal proceeding, the subject of the proceeding
 20 shall have the privilege of being represented by such coun-
 21 sel as may be authorized to practice in such proceeding
 22 as he or she may choose. This subsection shall not apply
 23 to screening proceedings described in section
 24 235(b)(1)(A).

1 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
2 ALIEN CHILDREN.—

3 “(1) IN GENERAL.—In any removal proceeding
4 and in any appeal proceeding before the Attorney
5 General from any such removal proceeding, an unac-
6 companied alien child (as defined in section 462(g)
7 of the Homeland Security Act of 2002 (6 U.S.C.
8 279(g))) shall be represented by Government-ap-
9 pointed counsel, at Government expense.

10 “(2) LENGTH OF REPRESENTATION.—Once a
11 child is designated as an unaccompanied alien child
12 under paragraph (1), the child shall be represented
13 by counsel at every stage of the proceedings from
14 the child’s initial appearance through the termi-
15 nation of immigration proceedings, and any ancillary
16 matters appropriate to such proceedings even if the
17 child attains 18 years of age or is reunified with a
18 parent or legal guardian while the proceedings are
19 pending.

20 “(3) NOTICE.—Not later than 72 hours after
21 an unaccompanied alien child is taken into Federal
22 custody, the alien shall be notified that he or she will
23 be provided with legal counsel in accordance with
24 this subsection.

1 “(4) WITHIN DETENTION FACILITIES.—The
2 Secretary of Homeland Security shall ensure that
3 unaccompanied alien children have access to counsel
4 inside all detention, holding, and border facilities.

5 “(c) PRO BONO REPRESENTATION.—

6 “(1) IN GENERAL.—To the maximum extent
7 practicable, the Attorney General shall make every
8 effort to use the services of competent counsel who
9 agree to provide representation to such children
10 under subsection (b) without charge.

11 “(2) DEVELOPMENT OF NECESSARY INFRA-
12 STRUCTURES AND SYSTEMS.—The Attorney General
13 shall develop the necessary mechanisms to identify
14 counsel available to provide pro bono legal assistance
15 and representation to children under subsection (b)
16 and to recruit such counsel.

17 “(d) CONTRACTS; GRANTS.—The Attorney General
18 may enter into contracts with, or award grants to, non-
19 profit agencies with relevant expertise in the delivery of
20 immigration-related legal services to children to carry out
21 the responsibilities under this section, including providing
22 legal orientation, screening cases for referral, recruiting,
23 training, and overseeing pro bono attorneys. Nonprofit
24 agencies may enter into subcontracts with, or award
25 grants to, private voluntary agencies with relevant exper-

1 tise in the delivery of immigration-related legal services
 2 to children in order to carry out this section.

3 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-
 4 TION OF CHILDREN.—

5 “(1) DEVELOPMENT OF GUIDELINES.—The Ex-
 6 ecutive Office for Immigration Review, in consulta-
 7 tion with voluntary agencies and national experts,
 8 shall develop model guidelines for the legal represen-
 9 tation of alien children in immigration proceedings,
 10 which shall be based on the children’s asylum guide-
 11 lines, the American Bar Association Model Rules of
 12 Professional Conduct, and other relevant domestic or
 13 international sources.

14 “(2) PURPOSE OF GUIDELINES.—The guide-
 15 lines developed under paragraph (1) shall be de-
 16 signed to help protect each child from any individual
 17 suspected of involvement in any criminal, harmful,
 18 or exploitative activity associated with the smuggling
 19 or trafficking of children, while ensuring the fairness
 20 of the removal proceeding in which the child is in-
 21 volved.

22 “(f) DUTIES OF COUNSEL.—Counsel provided under
 23 this section shall—

24 “(1) represent the unaccompanied alien child in
 25 all proceedings and matters relating to the immigra-

1 tion status of the child or other actions involving the
2 Department of Homeland Security;

3 “(2) appear in person for all individual merits
4 hearings before the Executive Office for Immigration
5 Review and interviews involving the Department of
6 Homeland Security;

7 “(3) owe the same duties of undivided loyalty,
8 confidentiality, and competent representation to the
9 child as is due to an adult client; and

10 “(4) carry out other such duties as may be pro-
11 scribed by the Attorney General or the Executive Of-
12 fice for Immigration Review.

13 “(g) SAVINGS PROVISION.—Nothing in this section
14 may be construed to supersede—

15 “(1) any duties, responsibilities, disciplinary, or
16 ethical responsibilities an attorney may have to his
17 or her client under State law;

18 “(2) the admission requirements under State
19 law; or

20 “(3) any other State law pertaining to the ad-
21 mission to the practice of law in a particular juris-
22 diction.”.

23 (2) RULEMAKING.—The Attorney General shall
24 promulgate regulations to implement section 292 of
25 the Immigration and Nationality Act, as added by

1 paragraph (1), in accordance with the requirements
2 set forth in section 3006A of title 18, United States
3 Code.

4 **SEC. 8. IMMIGRATION COURT IMPROVEMENTS.**

5 (a) **HIRING OF IMMIGRATION JUDGES.**—

6 (1) **IN GENERAL.**—During fiscal year 2019, the
7 Attorney General shall increase the total number of
8 immigration judges to adjudicate pending cases and
9 efficiently process future cases by not fewer than 75
10 judges.

11 (2) **QUALIFICATIONS.**—The Attorney General
12 shall ensure that each immigration judge hired
13 under this subsection is—

14 (A) highly qualified; and

15 (B) trained to conduct fair and impartial
16 hearings in accordance with applicable due
17 process requirements.

18 (3) **NO PREFERENCE FOR CANDIDATES WITH**
19 **PRIOR SERVICE IN THE FEDERAL GOVERNMENT.**—In
20 selecting immigration judges under this subsection,
21 the Attorney General may not assign any preference
22 to a candidate who has prior service in the Federal
23 Government over a candidate who—

1 (A) has equivalent subject-matter expertise
2 based on experience in a nonprofit, private
3 practice, or academic setting; but

4 (B) does not have previous Federal service.

5 (b) IMMIGRATION COURT STAFF.—During fiscal year
6 2019, the Attorney General shall—

7 (1) increase the total number of judicial law
8 clerks for the Executive Office for Immigration Re-
9 view by 75; and

10 (2) increase the total number of support staff
11 for immigration judges, including legal assistants
12 and interpreters, by 300.

13 (c) SUPPORT STAFF; OTHER RESOURCES.—The At-
14 torney General shall ensure that the Executive Office for
15 Immigration Review has sufficient support staff, adequate
16 technological and security resources, and appropriate fa-
17 cilities to conduct the immigration proceedings required
18 under Federal law.

19 (d) LIMITATION.—Amounts appropriated for the Ex-
20 ecutive Office for Immigration Review or for any other di-
21 vision, activity, or function of the Department of Justice
22 may not be used to implement numeric judicial perform-
23 ance standards or other standards that could negatively
24 impact the fair administration of justice by the immigra-
25 tion courts.

1 (e) DOCKET MANAGEMENT FOR RESOURCE CON-
 2 SERVATION.—Notwithstanding any opposition from the
 3 Secretary of Homeland Security or the Attorney General,
 4 immigration judges may administratively close cases, and
 5 the Board of Immigration Appeals may remand cases for
 6 administrative closure, if an individual in removal pro-
 7 ceedings—

8 (1) appears to be prima facie eligible for a visa
 9 or any other immigration benefit; and

10 (2) has a pending application for such benefit
 11 before U.S. Citizenship and Immigration Services or
 12 any other applicable Federal agency.

13 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated such sums as may be
 15 necessary to carry out this section.

16 **SEC. 9. ACCOUNTABILITY AND OVERSIGHT.**

17 (a) WEEKLY REPORTS.—

18 (1) IN GENERAL.—Not less frequently than
 19 weekly, the Secretary of Homeland Security, in col-
 20 laboration with the Secretary of Health and Human
 21 Services, shall submit to the appropriate committees
 22 of Congress a report that includes, for the preceding
 23 one-week period, the following:

24 (A) The total number of children in the
 25 custody of the Secretary of Homeland Security

1 and the Secretary of Health and Human Serv-
2 ices, disaggregated by—

3 (i) age;

4 (ii) the number of children in the cus-
5 tody of the Secretary of Homeland Secu-
6 rity;

7 (iii) the number of children in the cus-
8 tody of the Secretary of Health and
9 Human Services;

10 (iv) the location of the detention fa-
11 cilities in which such children are housed,
12 including city and State; and

13 (v) average number of days in such
14 custody.

15 (B)(i) The number of deaths of children in
16 such custody, as applicable, including relevant
17 details relating to the circumstances of each
18 death.

19 (ii) The information described in clause (i)
20 shall be submitted to Congress in a weekly re-
21 port under this paragraph, as applicable, not-
22 withstanding a requirement to report to Con-
23 gress such information under any other law.

24 (C) The total number of such children that
25 were separated from family members.

1 (D)(i) Subject to clause (ii), the total num-
2 ber of pregnant women in such custody,
3 disaggregated by—

4 (I) the number of such women in the
5 custody of the Secretary of Homeland Se-
6 curity;

7 (II) the number of such women in the
8 custody of the Secretary of Health and
9 Human Services; and

10 (III) the location of detention facilities
11 in which such pregnant women are housed,
12 including city and State.

13 (ii) Information described in clause (i) may
14 not be submitted in a weekly report if such in-
15 formation renders a pregnant woman personally
16 identifiable.

17 (E) The average number of days individ-
18 uals subject to the migrant protection protocol
19 issued on January 24, 2019, remain in Mexico
20 for the resolution of United States immigration
21 proceedings.

22 (2) MONTHLY PUBLICATION.—Not less fre-
23 quently than monthly, the Secretary of Homeland
24 Security shall publish on an internet website of the
25 Department of Homeland Security that is available

1 to the public a summary of the reports under para-
 2 graph (1) for the preceding one-month period.

3 (b) MANDATORY ACCESS TO DETENTION FACILITIES
 4 FOR MEMBERS OF CONGRESS.—

5 (1) IN GENERAL.—Subject to paragraph (3),
 6 the Secretary concerned shall allow a Member of
 7 Congress to tour any facility in which one or more
 8 detained individuals, including unaccompanied alien
 9 children, are housed at a time between 8:00 a.m.
 10 and 7:00 p.m. on a date requested by the Member
 11 of Congress if, not later than 24 hours before mid-
 12 night on the date requested, the Secretary concerned
 13 receives written notice from the Member of Congress
 14 that includes—

15 (A) the name of the facility; and

16 (B) the date on which the Member of Con-
 17 gress intends to tour the facility.

18 (2) ACCOMPANYING MEMBERS OF THE
 19 PRESS.—

20 (A) IN GENERAL.—Subject to subpara-
 21 graph (B), the Secretary concerned shall allow
 22 one or more members of the press to accom-
 23 pany a Member of Congress on a tour of a fa-
 24 cility under this subsection.

25 (B) LIMITATIONS.—

1 (i) STILL OR VIDEO CAMERAS.—The
2 Secretary concerned shall not be required
3 to allow a member of the press to enter a
4 facility under subparagraph (A) with a still
5 or video camera.

6 (ii) PERSONALLY IDENTIFYING INFOR-
7 MATION.—As a condition of entering a fa-
8 cility under subparagraph (A), a member
9 of the press shall agree not to release any
10 personally identifying information of a
11 staff member of the facility or a child
12 housed at the facility without the express
13 authorization of such staff member or
14 child.

15 (3) LIMITATION.—The Secretary concerned
16 may limit a tour under paragraph (1) to—

17 (A) in the case of a facility that houses
18 fewer than 50 unaccompanied alien children—

19 (i) not more than five Members of
20 Congress; and

21 (ii) accompanying members of the
22 press under paragraph (2); and

23 (B) in the case of a facility that houses not
24 fewer than 50 detained individuals, including
25 unaccompanied children—

1 (i) not more than ten Members of
2 Congress; and

3 (ii) accompanying members of the
4 press under paragraph (2).

5 (4) DEFINITION OF SECRETARY CONCERNED.—

6 In this subsection, the term “Secretary concerned”
7 means, as applicable—

8 (A) the Secretary of Homeland Security;
9 or

10 (B) the Secretary of Health and Human
11 Services.

○