

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Families
5 and Improving Immigration Procedures Act”.

6 **SEC. 2. ENSURING THAT FAMILIES REMAIN TOGETHER.**

7 (a) LIMITATION ON THE SEPARATION OF FAMI-
8 LIES.—

9 (1) IN GENERAL.—An agent or officer of U.S.

10 Customs and Border Protection may not remove a

1 child from his or her parent or legal guardian at or
2 near the port of entry or within 100 miles of the
3 border of the United States unless—

4 (A) a State court, authorized under State
5 law—

6 (i) terminates the rights of a parent
7 or legal guardian;

8 (ii) determines that it is in the best
9 interests of the child to be removed from
10 his or her parent or legal guardian, in ac-
11 cordance with the Adoption and Safe Fam-
12 ilies Act of 1997 (Public Law 105–89); or

13 (iii) makes any similar determination
14 that is legally authorized under State law

15 (B) an official from the State or county
16 child welfare agency with expertise in child
17 trauma and development determines that it is
18 in the best interests of the child to be removed
19 from his or her parent or legal guardian be-
20 cause the child—

21 (i) is in danger of abuse or neglect at
22 the hands of the parent or legal guardian;
23 or

24 (ii) is a danger to himself or herself or
25 to others; or

1 (C) the Chief Patrol Agent or the Area
2 Port Director, in his or her official and
3 undelegated capacity, authorizes separation,
4 upon the recommendation by an agent or offi-
5 cer, based on a finding that—

6 (i) the child is a victim of trafficking
7 or is at significant risk of becoming a vic-
8 tim of trafficking;

9 (ii) there is a strong likelihood that
10 the adult is not the parent or legal guard-
11 ian of the child; or

12 (iii) the child is in danger of abuse or
13 neglect at the hands of the parent or legal
14 guardian, or is a danger to himself or her-
15 self or to others.

16 (2) PROHIBITION ON SEPARATION.—An agency
17 may not remove a child from a parent or legal
18 guardian solely for the policy goal of deterring indi-
19 viduals from migrating to the United States or for
20 the policy goal of promoting compliance with civil
21 immigration laws.

22 (3) DOCUMENTATION REQUIRED.—The Sec-
23 retary shall ensure that a separation based upon a
24 situation described in paragraph (1)(C)—

25 (A) is documented in writing; and

1 (B) includes the reason for such separation
2 and the stated evidence for such separation.

3 (b) RECOMMENDATIONS FOR SEPARATION BY
4 AGENTS OR OFFICERS.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, the Sec-
7 retary, in consultation with the Secretary of Health
8 and Human Services, shall develop training and
9 guidance, with an emphasis on the best interests of
10 the child, childhood trauma, attachment, and child
11 development, for use by the agents and officers, in
12 order to standardize separations authorized under
13 subsection (a)(1)(C).

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

17 (A) review the guidance developed under
18 paragraph (1); and

19 (B) make recommendations to the Sec-
20 retary to ensure that such guidance conforms to
21 current evidence and best practices in child wel-
22 fare, child development, and childhood trauma.

23 (3) REQUIREMENT.—The guidance developed
24 under paragraph (1) shall incorporate the presump-
25 tions described in subsection (c).

1 (4) ADDITIONAL REQUIREMENTS.—

2 (A) EVIDENCE-BASED.—The guidance and
3 training developed under this subsection shall
4 incorporate evidence-based practices.

5 (B) TRAINING REQUIRED.—

6 (i) INITIAL TRAINING.—All agents
7 and officers of designated agencies, upon
8 hire, and annually thereafter, shall com-
9 plete training on adherence to the guidance
10 under this subsection.

11 (ii) ANNUAL TRAINING.—All Chief
12 Patrol Agents and Area Port Directors,
13 upon hire, and annually thereafter, shall
14 complete—

15 (I) training on adherence to the
16 guidance under this subsection; and

17 (II) 90 minutes of child welfare
18 practice training that is evidence-
19 based and trauma-informed.

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

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

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

4 (3) DETENTION.—There is a presumption that
5 detention is not in the best interests of families and
6 children.

7 (d) REQUIRED POLICY FOR LOCATING SEPARATED
8 CHILDREN.—

9 (1) IN GENERAL.—Not later than 180 days
10 after the after the date of the enactment of this Act,
11 the Secretary shall publish final public guidance that
12 describes, with specificity, the manner in which a
13 parent or legal guardian may locate a child who was
14 separated from the parent or legal guardian under
15 subsection (a)(1). In developing the public guidance,
16 the Secretary shall consult with the Secretary of
17 Health and Human Services, immigrant advocacy
18 organizations, child welfare organizations, and State
19 child welfare agencies.

20 (2) WRITTEN NOTIFICATION.—The Secretary
21 shall provide each parent or legal guardian who was
22 separated, with written notice of the public guidance
23 to locate a separated child.

24 (3) LANGUAGE ACCESS.—All guidance shall be
25 available—

1 (A) in English and Spanish; and

2 (B) at the request of the parent or legal
3 guardian, in the language or manner that is un-
4 derstandable by the parent or legal guardian.

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

9 (1) a status report on the monthly activities of
10 the child;

11 (2) information about the education and health
12 of the child, including any medical treatment pro-
13 vided to the child or medical treatment rec-
14 ommended for the child;

15 (3) information about changes to the child's im-
16 migration status; and

17 (4) other information about the child, designed
18 to promote and maintain family reunification, as the
19 Secretary determines in his or her discretion.

20 (f) ANNUAL REPORT ON FAMILY SEPARATION.—Not
21 later than 1 year after the date of the enactment of this
22 Act, and annually thereafter, the Secretary shall submit
23 a report to the committees of jurisdiction that describes
24 each instance in which a child was separated from a par-

1 ent or legal guardian and includes, for each such in-
2 stance—

3 (1) the relationship of the adult and the child;

4 (2) the age and gender of the adult and child;

5 (3) the length of separation;

6 (4) whether the adult was charged with a crime,

7 and if the adult was charged with a crime, the type

8 of crime;

9 (5) whether the adult made a claim for asylum,

10 expressed a fear to return, or applied for other im-

11 migration relief;

12 (6) whether the adult was prosecuted if charged

13 with a crime and the associated outcome of such

14 charges;

15 (7) the stated reason for, and evidence in sup-

16 port of, the separation;

17 (8) if the child was part of a sibling group at

18 the time of separation, whether the sibling group has

19 had physical contact and visitation;

20 (9) whether the child was rendered an unac-

21 companied alien child; and

22 (10) other information in the Secretary's discre-

23 tion.

24 (g) CLARIFICATION OF PARENTAL RIGHTS.—If a

25 child is separated from a parent or legal guardian, and

1 a State court has not made a determination that the pa-
2 rental rights have been terminated, there is a presumption
3 that—

4 (1) the parental rights remain intact; and

5 (2) the separation does not constitute an af-
6 firmative determination of abuse or neglect under
7 Federal or State law.

8 (h) CLARIFICATION OF EXISTING LAW.—

9 (1) FEDERAL LAW.—Nothing in this section
10 may be construed to supersede or modify Federal
11 child welfare law, as applicable, including the Adop-
12 tion and Safe Families Act of 1997 (Public Law
13 105–89).

14 (2) STATE LAW.—Nothing in this section may
15 be construed to supersede or modify State child wel-
16 fare laws, as applicable.

17 (i) GAO REPORT ON PROSECUTION OF ASYLUM
18 SEEKERS.—

19 (1) STUDY.—The Comptroller General of the
20 United States shall conduct a study of the prosecu-
21 tion of asylum seekers during the 10-year period
22 ending on the date of the enactment of this Act, in-
23 cluding—

24 (A) the total number of persons who
25 claimed a fear of persecution, received a favor-

1 able credible fear determination, and were re-
2 ferred for prosecution;

3 (B) an overview and analysis of the
4 metrics used by the Department of Homeland
5 Security and the Department of Justice to
6 track the number of asylum seekers referred for
7 prosecution;

8 (C) the total number of asylum seekers re-
9 ferred for prosecution, a breakdown and de-
10 scription of the criminal charges filed against
11 asylum seekers during such period, and a
12 breakdown and description of the convictions
13 secured;

14 (D) the total number of asylum seekers
15 who were separated from their children as a re-
16 sult of being referred for prosecution;

17 (E) a breakdown of the resources spent on
18 prosecuting asylum seekers during such period,
19 as well as any diversion of resources required to
20 prosecute asylum seekers, and any costs im-
21 posed on States and localities;

22 (F) the total number of asylum seekers
23 who were referred for prosecution and also went
24 through immigration proceedings; and

1 (G) the total number of asylum seekers re-
2 ferred for prosecution who were deported before
3 going through immigration proceedings.

4 (2) REPORT.—Not later than 1 year after the
5 date of the enactment of this Act, the Comptroller
6 General shall submit a report to the committees of
7 jurisdiction that describes the results of the study
8 conducted under paragraph (1).

9 **SEC. 3. FLORES SETTLEMENT AGREEMENT.**

10 (a) IN GENERAL.—A family unit may be detained
11 only in accordance with the holding made in *Flores v. Ses-*
12 *sions et al.* (9th Cir. July 5, 2017; C.D. CA; July 24,
13 2015) and the stipulated settlement agreement as filed in
14 the United States District Court for the Central District
15 of California on January 17, 1997 (CV 85 4544 RJK)
16 (commonly known as the “Flores settlement agreement”).

17 (b) RULEMAKING.—Any regulation proposed or pro-
18 mulgated to supersede the Flores settlement agreement is
19 null and void.

20 (c) RULE OF CONSTRUCTION.—Nothing in this Act
21 may be construed—

22 (1) to affect the application of the Flores settle-
23 ment agreement to unaccompanied alien children; or

24 (2) to abrogate the Flores settlement agree-
25 ment.

1 (d) REVIEW OF DETENTION DETERMINATIONS.—
2 The review of any determination by the Secretary to de-
3 tain an individual or family unit under this section shall
4 be in accordance with all other provisions of law, holdings
5 (including any holding made in *Flores v. Sessions et al.*
6 (9th Cir. July 5, 2017; C.D. CA. July 24, 2015)), consent
7 decrees, and settlement agreements (including the Flores
8 settlement agreement).

9 **SEC. 4. ACCESS TO COUNSEL FOR UNACCOMPANIED ALIEN**
10 **CHILDREN.**

11 (a) APPOINTMENT OF COUNSEL.—In any removal
12 proceeding and in any appeal proceeding before the Attor-
13 ney General from any such removal proceeding, an unac-
14 companied alien child (as defined in section 462(g) of the
15 Homeland Security Act on 2002 (6 U.S.C. 279(g))) shall
16 be represented by Government-appointed counsel, at Gov-
17 ernment expense.

18 (b) LENGTH OF REPRESENTATION.—Once a child is
19 designated as an unaccompanied alien child under sub-
20 section (a)—

21 (1) the child shall be represented by counsel at
22 every stage of the proceedings from the child's initial
23 appearance through the termination of immigration
24 proceedings; and

1 (2) any ancillary matters appropriate to such
2 proceedings even if the child reaches 18 years of age
3 or is reunified with a parent or legal guardian while
4 the proceedings are pending.

5 (c) NOTICE.—Not later than 72 hours after an unac-
6 panied alien child is taken into Federal custody, the
7 child shall be notified that he or she will be provided with
8 legal counsel in accordance with this section.

9 (d) WITHIN DETENTION FACILITIES.—The Sec-
10 retary shall ensure that unaccompanied alien children
11 have access to counsel inside all detention, holding, and
12 border facilities.

13 (e) PRO BONO REPRESENTATION.—

14 (1) IN GENERAL.—To the maximum extent
15 practicable, the Attorney General should make every
16 effort to utilize the services of competent counsel
17 who agree to provide representation to such children
18 under this section without charge.

19 (2) DEVELOPMENT OF NECESSARY INFRA-
20 STRUCTURES AND SYSTEMS.—The Attorney General
21 shall develop the necessary mechanisms—

22 (A) to identify counsel available to provide
23 pro bono legal assistance and representation to
24 children under this section; and

25 (B) to recruit such counsel.

1 (f) CONTRACTS; GRANTS.—

2 (1) IN GENERAL.—The Attorney General may
3 enter into contracts with, or award grants to, non-
4 profit agencies with relevant expertise in the delivery
5 of immigration-related legal services to children to
6 carry out the responsibilities under this section, in-
7 cluding providing legal orientation, screening cases
8 for referral, recruiting, training, and overseeing pro
9 bono attorneys.

10 (2) SUBCONTRACTS.—Nonprofit agencies may
11 enter into subcontracts with, or award grants to,
12 private voluntary agencies with relevant expertise in
13 the delivery of immigration related legal services to
14 children in order to carry out this section.

15 (g) MODEL GUIDELINES ON LEGAL REPRESENTA-
16 TION OF CHILDREN.—

17 (1) DEVELOPMENT OF GUIDELINES.—The Ex-
18 ecutive Office for Immigration Review, in consulta-
19 tion with voluntary agencies and national experts,
20 shall develop model guidelines for the legal represen-
21 tation of alien children in immigration proceedings,
22 which shall be based on the children's asylum guide-
23 lines, the American Bar Association Model Rules of
24 Professional Conduct, and other relevant domestic or
25 international sources.

1 (2) PURPOSE OF GUIDELINES.—The guidelines
2 developed under paragraph (1) shall be designed to
3 help protect each child from any individual suspected
4 of involvement in any criminal, harmful, or exploita-
5 tive activity associated with the smuggling or traf-
6 ficking of children, while ensuring the fairness of the
7 removal proceeding in which the child is involved.

8 (h) DUTIES OF COUNSEL.—Counsel provided under
9 this section shall—

10 (1) represent the unaccompanied alien child in
11 all proceedings and matters relating to the immigra-
12 tion status of the child or other actions involving the
13 Department of Homeland Security;

14 (2) appear in person for all individual merits
15 hearings before the Executive Office for Immigration
16 Review and interviews involving the Department of
17 Homeland Security;

18 (3) owe the same duties of undivided loyalty,
19 confidentiality, and competent representation to the
20 child as is due to an adult client; and

21 (4) carry out other such duties as may be pro-
22 scribed by the Attorney General or the Executive Of-
23 fice for Immigration Review.

1 **SEC. 5. INCREASES IN IMMIGRATION JUDGES AND SUP-**
2 **PORT STAFF.**

3 (a) IMMIGRATION JUDGES.—The Attorney General
4 shall increase the total number of immigration judges to
5 adjudicate pending cases and efficiently process future
6 cases by not fewer than 75 judges during fiscal year 2019.

7 (b) SUPPORT STAFF.—The Attorney General shall—

8 (1) increase the total number of judicial law
9 clerks by 75 during fiscal year 2019; and

10 (2) increase the total number of support staff
11 for immigration judges, including legal assistants
12 and interpreters, by 300 during fiscal year 2019.

13 **SEC. 6. DOCKET MANAGEMENT FOR RESOURCE CONSERVA-**
14 **TION.**

15 Notwithstanding any opposition from the Secretary,
16 immigration judges may administratively close cases, and
17 the Board of Immigration Appeals may remand cases for
18 administrative closure, if an individual in removal pro-
19 ceedings—

20 (1) appears to be prima facie eligible for a visa
21 or other immigration benefit; and

22 (2) has a pending application for such benefit
23 before U.S. Citizenship and Immigration Services or
24 another appropriate agency.

25 **SEC. 7. DEFINITIONS.**

26 In this Act:

1 (B) the Department of Justice; and

2 (C) the Department of Health and Human
3 Services.

4 (6) FINDING.—The term “finding” means an
5 individualized written assessment or screening by the
6 trained agent or officer that includes the concur-
7 rence of a child welfare specialist, documented as re-
8 quired under section 2(a)(3) and in accordance with
9 sections 3 and 4.

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