

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To reunite families separated at or near ports of entry.

**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 intended to be proposed by Ms. HARRIS

Viz:

1 At the end, add the following:

2 **SEC. 7. REUNITING UNACCOMPANIED NEWBORNS, IN-**

3 **FANTS, TODDLERS, AND OTHER CHILDREN**

4 **EXPEDITIOUSLY.**

5 (a) DEFINITIONS.—In this section:

6 (1) AGENCIES.—The term “agencies” means

7 the Department of Homeland Security and the De-

8 partment of Health and Human Services.

1           (2) APPREHENDED PARENT OR LEGAL GUARD-  
2           IAN.—The term “apprehended parent or legal  
3           guardian” means an alien who—

4                   (A) is 18 years of age or older;

5                   (B) is the parent or legal guardian of an  
6           alien child; and

7                   (C) was apprehended by the Department  
8           of Homeland Security, the Department of Jus-  
9           tice, or any other entity authorized to enforce  
10          section 275 of the Immigration and Nationality  
11          Act (8 U.S.C. 1325).

12          (3) BORDER.—The term “border” means an  
13          international border of the United States.

14          (4) CHILD.—The term “child” means an alien  
15          who—

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

17                   (B) has no permanent immigration status  
18          in the United States.

19          (5) DHS.—The term “DHS” means the De-  
20          partment of Homeland Security.

21          (6) HHS.—The term “HHS” means the De-  
22          partment of Health and Human Services.

23          (b) REUNIFICATION OF SEPARATED FAMILIES.—

24                  (1) RULEMAKING.—

1           (A) GUIDANCE.—Not later than 10 days  
2 after the date of the enactment of this Act, the  
3 Secretary of Homeland Security and the Sec-  
4 retary of Health and Human Services, after  
5 consultation with humanitarian organizations,  
6 child welfare organizations, State child welfare  
7 agencies, and States contiguous to the border  
8 with Mexico, shall promulgate and publish guid-  
9 ance through a direct final rule that specifically  
10 describes the coordinated efforts that the agen-  
11 cies will undertake to aid an apprehended par-  
12 ent or legal guardian in locating and reuniting  
13 with any children separated from them at or  
14 near the port of entry, or within 100 miles of  
15 the border, pursuant to applicable law.

16           (B) DEVELOPMENT; SERVICES; PUBLICA-  
17 TION.—The guidance promulgated pursuant to  
18 subparagraph (A) shall—

19                   (i) be developed to protect the best in-  
20 terests of affected children;

21                   (ii) describe all pro bono or govern-  
22 ment-funded services, including immigra-  
23 tion services, available for apprehended  
24 parents and legal guardians or affected  
25 children; and

1 (iii) be made publicly available in  
2 writing and on the websites of the agen-  
3 cies.

4 (2) COVERAGE OF JOINT GUIDANCE.—The  
5 guidance published pursuant to subsection (a) shall  
6 outline the agencies' coordinated efforts, including  
7 efforts—

8 (A) to develop and conduct family tracing  
9 procedures, in cooperation with nongovern-  
10 mental experts in child welfare best practices;

11 (B) to maintain a functional, accessible,  
12 frequent, and no cost means for apprehended  
13 parents and legal guardians to contact their  
14 children through a telephone hotline or visual  
15 conferencing—

16 (i) to obtain daily-updated informa-  
17 tion about the location of their children  
18 and all scheduled immigration proceedings  
19 for their children; and

20 (ii) to set up opportunities to speak  
21 with their child not fewer than 3 times per  
22 week, including at least once per week by  
23 video;

24 (C) to facilitate substantial daily access of  
25 nongovernmental case workers, child advocates,

1 and legal counsel to children separated from  
2 their parents and legal guardians to represent  
3 these children's best interests in custody deci-  
4 sions and immigration proceedings;

5 (D) to provide for humanitarian organiza-  
6 tions and State and local child welfare agencies  
7 in the jurisdictions in which the children are lo-  
8 cated to conduct unannounced, independent  
9 weekly inspections of all DHS and HHS facili-  
10 ties at which children who are separated from  
11 their apprehended parents or legal guardians  
12 are in custody;

13 (E) to coordinate with the Department of  
14 State and embassies and consulates of foreign  
15 governments to locate apprehended parents and  
16 legal guardians of children who have departed  
17 from the United States;

18 (F) to provide clear notice to apprehended  
19 parents and legal guardians of their legal  
20 rights, including—

21 (i) their parental and guardianship  
22 rights with respect to their children who  
23 have been designated as unaccompanied  
24 alien children; and

1                   (ii) their right to designate another  
2                   parent, legal guardian, or other qualified  
3                   adult custodian to sponsor and care for  
4                   such children;

5                   (G) to facilitate information sharing by  
6                   parents and legal guardians about any arrange-  
7                   ments to depart the United States with their  
8                   consulate, their children, their children's case  
9                   worker, legal counsel, child advocate, and other  
10                  adult custodians in advance of their departure;

11                  (H) to provide parents and legal guardians  
12                  with an order of deportation or removal access  
13                  to nongovernmental organizations providing as-  
14                  sistance with locating and reunifying their chil-  
15                  dren;

16                  (I) to provide cost-free transportation of  
17                  children separated from their parents or legal  
18                  guardians to reunite with them or another par-  
19                  ent, legal guardian, or other qualified adult cus-  
20                  todian to which the children consent;

21                  (J) to establish a recordkeeping system  
22                  that will maintain information to aid the reuni-  
23                  fication of every child separated from an appre-  
24                  hended parent or legal guardian;

1           (K) to provide free telephone calls between  
2           apprehended parents and their children; and

3           (L) to otherwise assist with the reunifica-  
4           tion of separated families.

5           (3) WRITTEN NOTIFICATION.—Shortly after  
6           guidance is published pursuant to paragraph (1), the  
7           Secretary of Homeland Security, the Secretary of  
8           Health and Human Services, and the Attorney Gen-  
9           eral shall provide each apprehended parent or legal  
10          guardian who has been separated from his or her  
11          child with written notice, in English, Spanish, or an-  
12          other language understandable by the parent or legal  
13          guardian, upon request, of any guidance that may  
14          assist them in their efforts to locate and reunify  
15          with their children.

16          (4) REUNIFICATION REQUIRED.—The agencies  
17          shall ensure immediate reunification of children that  
18          remain separated from their apprehended parent or  
19          guardian.

20          (5) OTHER REQUIREMENTS.—The agencies  
21          shall—

22                  (A) issue a privacy impact assessment re-  
23                  lated to the use of DNA testing under the sec-  
24                  tion; and

1 (B) establish a process for redressing viola-  
2 tions of the requirements under this section.

3 (6) EXEMPTIONS.—The agencies may not re-  
4 unite an apprehended parent or legal guardian with  
5 a separated child under this section if—

6 (A) the child has been determined to be a  
7 victim of trafficking, or is at significant risk of  
8 becoming a victim of trafficking, by that appre-  
9 hended parent or guardian, as determined by a  
10 Chief Border Patrol Agent or Customs and  
11 Border Protection Area Port Director in their  
12 official and undelegated capacity;

13 (B) the child appears to be in danger of  
14 abuse or neglect at the hands of the appre-  
15 hended parent or legal guardian;

16 (C) the child is a danger to himself, her-  
17 self, or others, as determined by a State court  
18 or an official from a State or county child wel-  
19 fare agency in his or her official and  
20 undelegated capacity; or

21 (D) there is a strong likelihood that the  
22 adult is not the apprehended parent or legal  
23 guardian of the child.

24 (c) DNA TESTING.—



1           (1) USE OF OTHER TECHNIQUES.—Before uti-  
2           lizing DNA testing to determine family relationships,  
3           agencies shall use other techniques commonly uti-  
4           lized by United States courts for determining family  
5           relationships, including—

6                   (A) official documents;

7                   (B) representations from a witness, parent,  
8           relative, or child; and

9                   (C) observations of interactions between  
10          the adult and the child.

11          (2) DNA TESTING.—

12                (A) IN GENERAL.—DNA testing may not  
13          be required as a condition of reunification if al-  
14          ternative means of demonstrating a familial re-  
15          lationship have been established. If reasonable  
16          suspicions remain about a familial relationship  
17          after exhausting the techniques referred to in  
18          paragraph (1), DNA testing may be used.

19                (B) PROTOCOLS.—The agencies shall de-  
20          velop protocols for establishing a familial rela-  
21          tionship if an individual does not consent to  
22          DNA testing or may not have a biological rela-  
23          tionship with the child.

24                (C) TYPE OF TEST.—Whenever DNA test-  
25          ing is used, the agencies—

1 (i) shall use the least privacy-invasive  
2 type of DNA test available to confirm the  
3 claimed relationship; and

4 (ii) may not charge the child or appre-  
5 hended parent or guardian for the costs of  
6 conducting such test.

7 (D) CONSENT.—The agencies shall—

8 (i) obtain the consent of any indi-  
9 vidual who is older than 18 years of age  
10 before conducting a DNA test;

11 (ii) make every effort to obtain the  
12 consent of a guardian before conducting a  
13 DNA test on anyone who is younger than  
14 18 years of age; and

15 (iii) destroy DNA samples as soon as  
16 possible, and not later than 7 days after  
17 completing the required DNA matching  
18 tests, to minimize any potential misuse of  
19 genetic information collected under this  
20 subsection.

21 (3) PROTECTION OF INFORMATION.—

22 (A) IN GENERAL.—If DNA testing is used  
23 for the purposes of reunification, the agencies  
24 shall ensure the protection of privacy, genetic  
25 data, and personal information of children, par-

1 ents, all individuals being tested, and their rel-  
2 atives.

3 (B) OTHER USES PROHIBITED.—Agencies  
4 and private entities may only access, use, or  
5 store any personal DNA information collected  
6 under this subsection for family reunification  
7 purposes and are prohibited from sharing any  
8 such data or samples with agencies other than  
9 those carrying out the reunification process. In-  
10 formation collected under this section may not  
11 be used by any agency or contractor for any  
12 other purpose, including criminal or immigra-  
13 tion enforcement.

14 (4) DNA MATCH.—

15 (A) REUNIFICATION.—As soon as a DNA  
16 match is identified, the agencies shall reunite  
17 family members as expeditiously as possible.

18 (B) NO MATCH; NO CONSENT.—A refusal  
19 to consent to a DNA test or the failure to iden-  
20 tify a match between a child and an appre-  
21 hended parent may not be used as a basis for  
22 concluding that there is no familial relationship  
23 between a such child and such parent if—

24 (i) the familial relationship is not bio-  
25 logical; or

1 (ii) the familial relationship may be  
2 established through alternate means.

3 (d) ENHANCED PROTECTIONS FOR SEPARATE FAMI-  
4 LIES.—

5 (1) IN GENERAL.—The Secretary of Homeland  
6 Security shall establish secure alternatives programs  
7 that incorporate case management services in each  
8 field office of the Department of Homeland Security  
9 to ensure appearances at immigration proceedings  
10 and public safety.

11 (2) ALTERNATIVES TO DETENTION.—

12 (A) CONTRACT AUTHORITY.—The Sec-  
13 retary of Homeland Security shall contract with  
14 nongovernmental, community-based organiza-  
15 tions to conduct screening of detainees, provide  
16 appearance assistance services, and operate  
17 community-based supervision programs. Secure  
18 alternatives shall offer a continuum of super-  
19 vision mechanisms and options, including com-  
20 munity support, depending on an assessment of  
21 each individual's circumstances. The Secretary  
22 may contract with nongovernmental organiza-  
23 tions to implement secure alternatives that  
24 maintain custody over the alien.

25 (B) ELIGIBILITY DETERMINATION.—

1 (i) RELEASE.—The Secretary of  
2 Homeland Security shall release each ap-  
3 prehended parent or legal guardian on re-  
4 cognizance, parole, or bond, or permit such  
5 parent or legal guardian to participate in  
6 an alternative to detention program, such  
7 as the Family Case Management Program  
8 authorized under paragraph (3), unless the  
9 Secretary demonstrates that such partici-  
10 pation would create a substantial risk that  
11 the apprehended parent or legal guardian  
12 is likely to cause harm to himself, herself,  
13 or others.

14 (ii) BURDEN OF PROOF.—In order to  
15 demonstrate that continued detention is  
16 necessary, the Secretary shall produce  
17 clear and convincing evidence of risk fac-  
18 tors, including credible and individualized  
19 information.

20 (iii) APPEAL.—Not later than 72  
21 hours after the Secretary determines that  
22 an apprehended parent or legal guardian is  
23 ineligible for an alternative to detention  
24 program under this subsection, the parent  
25 or legal guardian shall be provided with an

1 opportunity to appeal such determination  
2 in a hearing before an immigration judge.

3 (3) RESTORATION OF THE FAMILY CASE MAN-  
4 AGEMENT PROGRAM.—

5 (A) IN GENERAL.—Not later than 7 days  
6 after the date of the enactment of this Act, the  
7 Secretary of Homeland Security shall restore  
8 the U.S. Immigration and Customs Enforce-  
9 ment Family Case Management Program,  
10 which shall provide community supervision and  
11 community support services, including case  
12 management services, appearance services, and  
13 screening of aliens who have been detained be  
14 run through a contract with a not-for-profit en-  
15 tity.

16 (B) CONTRACT.—Any contract for pro-  
17 gramming or services described in subpara-  
18 graph (A) shall be awarded to a not-for-profit  
19 organization with demonstrated expertise in  
20 meeting the areas specified in that subpara-  
21 graph.

22 (4) UNACCOMPANIED ALIEN CHILD DESIGNA-  
23 TION.—The Secretary of Homeland Security shall  
24 treat a child, who has been separated from an appre-  
25 hended parent or legal guardian and has been des-

1       ignated an unaccompanied alien child, as an unac-  
2       companied alien child for the duration of his or her  
3       immigration proceedings.

4           (5) AUTOMATIC STAY OF REMOVAL OF PARENTS  
5       AND LEGAL GUARDIANS DURING CHILD'S IMMIGRA-  
6       TION PROCEEDINGS.—Until the earlier of the date  
7       on which the child's immigration proceedings are  
8       concluded or the date on which the child attains 18  
9       years of age, the Secretary of Homeland Security  
10      may not remove an apprehended parent or legal  
11      guardian of such child from the United States unless  
12      the apprehended parent or legal guardian, after  
13      being afforded the opportunity for legal consultation,  
14      agrees to removal.

15      (e) CONFIDENTIALITY.—

16           (1) IN GENERAL.—Except as provided in para-  
17      graph (2), the Secretary of Homeland Security may  
18      not use information obtained or recorded pursuant  
19      to this Act to assist in immigration enforcement ac-  
20      tions taken against any sponsor, potential sponsor,  
21      custodian, potential custodian, or household member  
22      of a child or apprehended parent or legal guardian.

23           (2) EXCEPTION.—Paragraph (1) does not apply  
24      to the use of information described in that sub-  
25      section about a particular sponsor, potential sponsor,

1       custodian, potential custodian, or household member  
2       for purposes of a law enforcement investigation re-  
3       lated to—

4               (A) forced labor or human trafficking  
5               under section 1589, 1590, or 1591 of title 18,  
6               United States Code; or

7               (B) child exploitation under section 2251,  
8               2251A, 2252, or 2252A of title 18, United  
9               States Code.

10       (f) ESTABLISHMENT OF OFFICE FOR LOCATING AND  
11 REUNITING CHILDREN WITH PARENTS.—

12               (1) IN GENERAL.—The Secretary of Homeland  
13       Security, the Attorney General, and the Secretary of  
14       Health and Human Services shall jointly establish  
15       an interagency office, which shall be—

16               (A) known as the “Office for Locating and  
17       Reuniting Children with Parents” (referred to  
18       in this section as the “Office”); and

19               (B) responsible for expediting and facili-  
20       tating the reunification of alien children and  
21       parents separated after entering the United  
22       States.

23       (2) DUTIES.—The Office shall—

24               (A) expeditiously implement guidance des-  
25       ignated for its jurisdiction under subsection (b);



1 (B) establish 24-hour priority data and in-  
2 formation communication networks between  
3 HHS, DHS, and the Department of Justice;  
4 and

5 (C) identify and immediately inform Con-  
6 gress if the Office determines that insufficient  
7 appropriations, or any other statutory or regu-  
8 latory condition hinders the safe and timely re-  
9 union of separated alien children with their par-  
10 ents, pursuant to the final rule promulgated  
11 under subsection (b).

12 (3) REPORT.—The Office shall submit a weekly  
13 report to Congress that includes—

14 (A) the number and location of children in  
15 the physical custody of DHS or HHS who have  
16 been separated from an apprehend parent or  
17 legal guardian;

18 (B) the number of such children who have  
19 been physically reunified with their parent or  
20 legal guardian;

21 (C) the physical location of parents who  
22 have yet to be reunited with their children, in-  
23 cluding the parents who have been deported  
24 without their children;

1 (D) the number of such children who have  
2 not yet been physically reunited with their par-  
3 ent or legal guardian; and

4 (E) an outline of the progress made in im-  
5 plementing the guidance published pursuant to  
6 subsection (b)(1).

7 (g) SAVINGS PROVISIONS.—

8 (1) FEDERAL LAW.—Nothing in this section  
9 may be construed to supersede or modify—

10 (A) the William Wilberforce Trafficking  
11 Victims Protection Act of 2008 (8 U.S.C. 1232  
12 et seq.);

13 (B) the Stipulated Settlement Agreement  
14 filed in the United States District Court for the  
15 Central District of California on January 17,  
16 1997 (CV 85–4544–RJK) (commonly known as  
17 the “Flores Settlement Agreement”);

18 (C) the Homeland Security Act of 2002  
19 (Public Law 107–296); or

20 (D) any applicable Federal child welfare  
21 law, including the Adoption and Safe Families  
22 Act of 1997 (Public Law 105–89).

23 (2) STATE LAW.—Nothing in this section may  
24 be construed to supersede or modify any applicable  
25 State child welfare law.

1           (h) REALLOCATION OF DEPARTMENT OF HOMELAND  
2 SECURITY APPROPRIATIONS.—

3           (1) IN GENERAL.—Of the amount allocated to  
4 U.S. Immigration and Customs Enforcement for fis-  
5 cal year 2019 for enforcement, detention, and re-  
6 moval operations, \$50,000,000 shall be reallocated  
7 to carry out subsection (b) and (d)(1).

8           (2) REUNIFICATION.—Not less than  
9 \$15,000,000 of the amount reallocated under para-  
10 graph (1) shall be made available to carry out sub-  
11 section (b).