

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; PURPOSE.**

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

6 (b) **PURPOSE.**—The purpose of this Act is to reaffirm
7 that—

8 (1) the Federal Government is responsible for
9 the health, safety, and well-being of children and
10 families in the custody of the Federal Government;

1 committee on Education and Labor, and the Com-
2 mittee on the Judiciary of the House of Rep-
3 resentatives.

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

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

7 (B) does not have permanent immigration
8 status in the United States.

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

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

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

19 (B) the average length of care for unac-
20 companied alien children in custody of the Sec-
21 retary of Health and Human Services exceeds
22 35 days.

23 (6) INFLUX CARE FACILITY.—The term “influx
24 care facility” means an Office of Refugee Resettle-
25 ment facility that is operated to provide temporary

1 emergency shelter and services for unaccompanied
2 alien children during an influx or emergency.

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

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

11 (A) that provides residential care for unac-
12 companied alien children; and

13 (B) at which all programmatic components
14 are administered onsite and in the least restric-
15 tive environment.

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

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

21 (a) LIMITATION ON THE SEPARATION OF FAMI-
22 LIES.—

23 (1) IN GENERAL.—An agent or officer of U.S.
24 Customs and Border Protection shall not remove a
25 child from his or her parent or legal guardian at or

1 near a port of entry or within 100 miles of the bor-
2 der of the United States unless one of the following
3 situations has occurred:

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

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

8 (ii) determines that it is in the best
9 interests of the child to be removed from
10 the parent or legal guardian, in accordance
11 with the Adoption and Safe Families Act
12 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 the parent or legal guardian because the
20 child is—

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

23 or

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

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

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

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

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

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

20 (A) deterring individuals from migrating to
21 the United States; or

22 (B) promoting compliance with civil immi-
23 gration law.

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

4 (A) is documented in writing; and

5 (B) includes—

6 (i) the reason for such separation; and

7 (ii) the stated evidence for such sepa-
8 ration.

9 (b) RECOMMENDATIONS FOR SEPARATION BY
10 AGENTS OR OFFICERS.—

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

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

24 (A) review the guidance developed under
25 paragraph (1); and

1 (B) make recommendations to the Sec-
2 retary to ensure that such guidance conforms to
3 current evidence and best practices in child wel-
4 fare, child development, and childhood trauma.

5 (3) REQUIREMENT.—The guidance developed
6 under paragraph (1) shall incorporate the presump-
7 tions described in subsection (c).

8 (4) ADDITIONAL REQUIREMENTS.—

9 (A) EVIDENCE-BASED.—The guidance and
10 training developed under this subsection shall
11 incorporate evidence-based practices.

12 (B) TRAINING REQUIRED.—

13 (i) INITIAL TRAINING.—All agents
14 and officers of U.S. Customs and Border
15 Protection, on hire, and annually there-
16 after, shall complete training on adherence
17 to the guidance developed under this sub-
18 section.

19 (ii) ANNUAL TRAINING.—All Chief
20 Patrol Agents and Area Port Directors, on
21 hire, and annually thereafter, shall com-
22 plete—

23 (I) training on adherence to the
24 guidance developed under this sub-
25 section; and

1 (II) 90 minutes of child welfare
2 practice training that is evidence-
3 based and trauma-informed.

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

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

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

11 (3) DETENTION.—There is a presumption that
12 detention is not in the best interests of families and
13 children.

14 (d) REQUIRED POLICY FOR LOCATING SEPARATED
15 CHILDREN.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the Sec-
18 retary shall publish final public guidance that de-
19 scribes, with specificity, the manner in which a par-
20 ent or legal guardian may locate a child who was
21 separated from the parent or legal guardian under
22 subsection (a)(1).

23 (2) CONSULTATION.—In developing such public
24 guidance, the Secretary shall consult with the Sec-
25 retary of Health and Human Services, immigrant

1 advocacy organizations, child welfare organizations,
2 and State child welfare agencies.

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

7 (4) LANGUAGE ACCESS.—Such public guidance
8 shall be—

9 (A) available in English and Spanish; and

10 (B) at the request of the parent or legal
11 guardian, made available in the language or
12 manner that is understandable by the parent or
13 legal guardian.

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

18 (1) a status report on the monthly activities of
19 the child;

20 (2) information about the education and health
21 of the child, including any medical treatment pro-
22 vided to the child or medical treatment rec-
23 ommended for the child;

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

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

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

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

10 (2) includes, for each such instance—

11 (A) the relationship of the adult and the
12 child;

13 (B) the age and gender of the adult and
14 child;

15 (C) the length of separation;

16 (D) whether the adult was charged with a
17 crime, and if the adult was charged with a
18 crime, the type of crime;

19 (E) whether the adult made a claim for
20 asylum, expressed a fear to return, or applied
21 for other immigration relief;

22 (F) whether the adult was prosecuted if
23 charged with a crime and the associated out-
24 come of such charges;

1 (G) the stated reason for, and evidence in
2 support of, the separation;

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

6 (I) whether the child was rendered an un-
7 accompanied alien child; and

8 (J) any other information, as determined
9 by the Secretary.

10 (g) CLARIFICATION OF PARENTAL RIGHTS.—If a
11 child is separated from a parent or legal guardian and a
12 State court has not made a determination that the paren-
13 tal rights have been terminated, there is a presumption
14 that—

15 (1) the parental rights remain intact; and

16 (2) the separation does not constitute an af-
17 firmative determination of abuse or neglect under
18 Federal or State law.

19 (h) CLARIFICATION OF EXISTING LAW.—

20 (1) FEDERAL LAW.—Nothing in this section
21 may be interpreted to supersede or modify Federal
22 child welfare law, as applicable, including the Adop-
23 tion and Safe Families Act of 1997 (Public Law
24 105–89).

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

4 (i) GAO REPORT ON PROSECUTION OF ASYLUM
5 SEEKERS.—

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

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

12 (A) The total number of persons who
13 claimed fear of persecution, received a favorable
14 credible fear determination, and were referred
15 for prosecution.

16 (B) An overview and analysis of the
17 metrics used by the Department of Homeland
18 Security and the Department of Justice to
19 track the number of asylum seekers referred for
20 prosecution.

21 (C) The total number of asylum seekers
22 referred for prosecution, a breakdown and de-
23 scription of the criminal charges filed against
24 asylum seekers during such period, and a

1 breakdown and description of the convictions
2 secured.

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

6 (E) A description of—

7 (i) the amounts spent on prosecuting
8 asylum seekers during such period;

9 (ii) the diversion of resources required
10 to prosecute asylum seekers; and

11 (iii) any costs imposed on States and
12 localities.

13 (F) The total number of asylum seekers
14 who—

15 (i) were referred for prosecution; and

16 (ii) were subject to immigration pro-
17 ceedings.

18 (G) The total number of asylum seekers
19 referred for prosecution who were deported be-
20 fore going through immigration proceedings.

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

1 (j) DEFINITIONS.—In this section:

2 (1) AGENT; OFFICER.—The terms “agent” and
3 “officer” include contractors of the Federal Govern-
4 ment.

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

7 (A) the Committee on the Judiciary and
8 the Committee on Health, Education, Labor,
9 and Pensions of the Senate; and

10 (B) the Committee on the Judiciary and
11 the Committee on Education and Labor of the
12 House of Representatives.

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

18 (4) FINDING.—The term “finding” means an
19 individualized written assessment or screening by the
20 trained agent or officer that includes a consultation
21 with, and concurrence from, a child welfare spe-
22 cialist, formalized as required under subsection
23 (a)(3) and consistent with subsections (b), (c), and
24 (g).

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

3 **SEC. 4. HEALTH AND SAFETY PROTECTIONS FOR DETAINED**
4 **CHILDREN.**

5 (a) FLORES SETTLEMENT AGREEMENT.—

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

15 (2) RULEMAKING.—Any regulation proposed or
16 promulgated to supersede the Flores settlement
17 agreement shall have no force or effect.

18 (3) RULE OF CONSTRUCTION.—Nothing in this
19 Act may be construed—

20 (A) to affect the application of the Flores
21 settlement agreement to unaccompanied alien
22 children; or

23 (B) to abrogate the Flores settlement
24 agreement.

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

10 (b) PROMPT MEDICAL ASSESSMENTS FOR DETAINED
11 CHILDREN.—

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

19 (2) MEDICAL EVALUATION BY MEDICAL PRO-
20 FESSIONAL WITH PEDIATRIC TRAINING.—Not later
21 than 48 hours after the time at which a child is
22 taken into the custody of the Secretary of Homeland
23 Security, the Secretary shall ensure that the child
24 receives a medical evaluation by a medical profes-
25 sional with specialized pediatric training—

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

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

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

18 (c) DETENTION STANDARDS FOR U.S. CUSTOMS AND
19 BORDER PROTECTION FACILITIES.—With respect to any
20 U.S. Customs and Border Protection facility, the Sec-
21 retary of Homeland Security shall ensure that—

22 (1) the facility—

23 (A) complies with the standards of the
24 U.S. Customs and Border Protection entitled

1 “National Standards on Transport, Escort, De-
2 tention, and Search” issued in October 2015;

3 (B) remains at an appropriate tempera-
4 ture;

5 (C) is properly ventilated;

6 (D) has adequate supervision and other
7 safeguards to protect detained children from
8 other detained individuals; and

9 (E) has a child welfare specialist on staff,
10 or has prompt access to a child welfare spe-
11 cialist, for purposes of making a finding under
12 section 3(a)(1)(C);

13 (2) each detained individual is provided—

14 (A) not fewer than three healthy and nu-
15 tritious meals daily, in accordance with the
16 most recent dietary guidelines of the Depart-
17 ment of Agriculture, that—

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

21 (ii) in the case of a detained child or
22 an individual who is pregnant or
23 breastfeeding, meet, as applicable—

24 (I) the nutrition standards for
25 the school lunch program authorized

1 under the Richard B. Russell National
2 School Lunch Act (42 U.S.C. 1751 et
3 seq.) and the school breakfast pro-
4 gram established by section 4 of the
5 Child Nutrition Act of 1966 (42
6 U.S.C. 1773); or

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

13 (B) not less than 1 gallon of clean drink-
14 ing water daily, including age-appropriate liq-
15 uids;

16 (C) regular access to hygiene products, in-
17 cluding—

18 (i) soap;

19 (ii) a toothbrush and toothpaste;

20 (iii) not fewer than one full change of
21 clothing;

22 (iv) a towel;

23 (v) toilet paper;

24 (vi) feminine hygiene products, as ap-
25 plicable;

1 (vii) prenatal vitamins, as applicable;

2 and

3 (viii) diaper changing materials, as

4 applicable, including—

5 (I) a clean diaper changing sta-
6 tion;

7 (II) diapers in the appropriate
8 size;

9 (III) diaper rash ointment;

10 (IV) baby wipes; and

11 (V) diaper disposal receptacles;

12 (D) regular access to showers, sinks, and
13 toilets; and

14 (E) an opportunity to contact any family
15 member with whom the detained individual was
16 apprehended; and

17 (3) in the case of a detained individual the pre-
18 scription medication of whom is confiscated on ap-
19 prehension, not later than six hours after the time
20 at which the detained individual arrives at a U.S.
21 Customs and Border Protection facility, a medical
22 professional, or in the case of a child, a medical pro-
23 fessional with pediatric training reviews such confis-
24 cation and makes a determination whether the medi-
25 cation shall be—

1 (A) kept by the detained individual in his
2 or her possession for regular use during deten-
3 tion;

4 (B) properly stored by U.S. Customs and
5 Border Protection officials, with appropriate ac-
6 cess for regular use by the detained individual
7 during detention; or

8 (C) stored with the personal property of
9 the detained individual.

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

20 (e) CARE AND CUSTODY STANDARDS FOR OFFICE OF
21 REFUGEE RESETTLEMENT FACILITIES.—

22 (1) NEW CONTRACTS.—On the maturation of
23 any existing contract to house unaccompanied alien
24 children, the Secretary of Health and Human Serv-
25 ices may only offer to extend or enter into a new

1 contract or cooperative agreement for the housing of
2 unaccompanied alien children with one or more non-
3 profit entities that are—

4 (A) licensed by the applicable State; and

5 (B) in compliance with Exhibit 1 of the
6 Flores settlement agreement, regardless of the
7 status of the underlying Flores settlement
8 agreement.

9 (2) PRIORITIZATION OF SMALL FACILITIES.—

10 The Secretary of Health and Human Services shall
11 prioritize the use of standard care facilities and in-
12 flux care facilities that house not more than 100 un-
13 accompanied alien children.

14 (3) LIMITATIONS ON USE OF INFLUX CARE FA-
15 CILITIES.—

16 (A) LENGTH OF CARE EXCEEDING 35
17 DAYS.—

18 (i) IN GENERAL.—In the case of an
19 influx, the Secretary of Health and Human
20 Services may not house one or more unac-
21 companied alien children in an influx care
22 facility for more than 30 days.

23 (ii) DAILY REPORTS.—

24 (I) IN GENERAL.—Not less fre-
25 quently than daily during an influx in

1 (AA) the date on which
2 a family reunification appli-
3 cation is submitted for an
4 unaccompanied alien child;
5 and

6 (BB) the date on which
7 the Secretary of Health and
8 Human Services issues a de-
9 cision on such application.

10 (cc) The total number of
11 such applications granted.

12 (dd) The total number of
13 such applications denied.

14 (ee) A description of any ac-
15 tion considered but not taken
16 with respect to the care and cus-
17 tody of unaccompanied alien chil-
18 dren as a result of a conflict with
19 Federal or State law.

20 (B) TRANSFER.—The Secretary of Health
21 and Human Services may transfer an unaccom-
22 panied alien child from a State-licensed stand-
23 ard care facility to an influx care facility solely
24 for the purpose of—

25 (i) family reunification; or

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

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

7 (a) STAFF-TO-CHILD RATIOS FOR OFFICE OF REF-
8 UGEE RESETTLEMENT FACILITIES.—

9 (1) IN GENERAL.—Not later than 90 days after
10 the date of the enactment of this Act, the Secretary
11 of Health and Human Services, in collaboration with
12 the Comptroller General of the United States, shall
13 develop standards for recommended staff-to-child ra-
14 tios for Federal field specialists and third-party case
15 review coordinators at Office of Refugee Resettle-
16 ment facilities.

17 (2) INTERIM STANDARD.—Beginning on the
18 date of the enactment of this Act and ending on the
19 date on which the standards under paragraph (1)
20 are implemented, the Secretary of Health and
21 Human Services shall ensure that any standard care
22 facility or influx care facility for unaccompanied
23 alien children maintains a staff-to-child ratio of not
24 fewer than—

1 (A) one Federal field specialist for every
2 50 unaccompanied alien children; and

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

5 (3) CASE LOAD LIMITATION.—The Secretary of
6 Health and Human Services shall establish a max-
7 imum case load for each case manager at an Office
8 of Refugee Resettlement facility that is not greater
9 than the lesser of—

10 (A) five new unaccompanied alien children
11 cases and a total of not more than eight active
12 cases each month; or

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

15 (4) SUPPLEMENTAL FUNDS.—The Secretary of
16 Health and Human Services shall authorize supple-
17 mental funds—

18 (A) to provide overtime compensation for
19 case managers at Office of Refugee Resettle-
20 ment facilities for extended work hours and
21 work days during an influx; and

22 (B) to hire additional staff to carry out
23 home study services relating to the placement of
24 unaccompanied alien children with sponsors on
25 release from custody.

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

13 (c) EXPANSION OF FAMILY CASE MANAGEMENT
14 PROGRAM.—

15 (1) IN GENERAL.—The Secretary of Homeland
16 Security shall provide to the alternatives to deten-
17 tion division of U.S. Immigration and Customs En-
18 forcement, including the Family Case Management
19 Program, sufficient funds to cover the costs of each
20 individual who—

21 (A) has a pending immigration proceeding;

22 and

23 (B) is not subject to detention under sub-
24 section (d).

1 (2) CONTRACTS AUTHORIZED.—The Director of
2 U.S. Immigration and Customs Enforcement shall
3 offer to enter into one or more contracts with one
4 or more nonprofit service providers that, to the maximum extent practicable, have the capacity to provide evidence-based services required to operate an
5 alternatives to detention program for the least restrictive
6 setting.

7 (3) PRIORITIZATION.—The Secretary of Homeland Security shall ensure that any expenditure for
8 the Family Case Management Program is prioritized
9 over any other expenditure from the Alternatives to
10 Detention account.

11 (4) AUTHORIZATION OF APPROPRIATIONS.—
12 There are authorized to be appropriated such sums
13 as may be necessary to carry out this subsection.

14 (d) IMMIGRATION DETENTION PRIORITIES.—

15 (1) IN GENERAL.—The Director of U.S. Immigration and Customs Enforcement shall prioritize
16 the limited resources of U.S. Immigration and Customs
17 Enforcement to detain aliens who pose—

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

20 (B) a risk of flight that cannot be mitigated by an alternative to detention.
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1 (2) PRESUMPTION.—Except in extraordinary
2 circumstances, such as a circumstance in which an
3 alien is known to be a member of a terrorist organi-
4 zation or a transnational criminal organization, an
5 alien shall not be detained if—

6 (A) the alien—

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

9 (ii) has a disability;

10 (iii) is elderly;

11 (iv) is pregnant or breastfeeding;

12 (v) is under 18 years of age; or

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

15 (I) a person under 18 years of
16 age; or

17 (II) an infirm person; or

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

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

21 (a) STATEMENT OF POLICY ON CHILD ASYLUM
22 SEEKERS.—It shall be the policy of the United States that
23 no child may be delayed or prevented from crossing the
24 Southern border at a port of entry for the purpose of ap-

1 plying for asylum or any other applicable legal immigra-
2 tion status.

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

9 (c) MODIFICATION OF TERM “ASYLUM OFFICER” TO
10 EXCLUDE OFFICERS OF U.S. CUSTOMS AND BORDER
11 PROTECTION.—Section 235(b)(1)(E) of the Immigration
12 and Nationality Act (8 U.S.C. 1225(b)(1)(E)) is amend-
13 ed—

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

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

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

19 “(iii) is employed by the Refugee,
20 Asylum, and International Operations Di-
21 rectorate of the U.S. Citizenship and Im-
22 migration Services.”.

23 (d) IMPROVING IMMIGRATION COURT EFFICIENCY
24 AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL
25 INFORMATION.—

1 (1) APPOINTMENT OF COUNSEL IN REMOVAL
2 PROCEEDINGS; RIGHT TO REVIEW CERTAIN DOCU-
3 MENTS IN REMOVAL PROCEEDINGS.—Section 240(b)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1229a(b)) is amended—

6 (A) in paragraph (4)—

7 (i) in subparagraph (A)—

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

10 (II) by striking the comma at the
11 end and inserting a semicolon;

12 (ii) by redesignating subparagraphs
13 (B) and (C) as subparagraphs (D) and
14 (E), respectively;

15 (iii) by inserting after subparagraph
16 (A) the following:

17 “(B) the Attorney General may appoint or
18 provide counsel, at Government expense, to
19 aliens in immigration proceedings;

20 “(C) the alien, or the alien’s counsel, not
21 later than 7 days after receiving a notice to ap-
22 pear under section 239(a), shall receive a com-
23 plete copy of the alien’s immigration file (com-
24 monly known as an ‘A-file’) in the possession of
25 the Department of Homeland Security (other

1 than documents protected from disclosure under
2 section 552(b) of title 5, United States Code);”;
3 and

4 (iv) in subparagraph (D), as redesign-
5 nated, by striking “this Act, and” and in-
6 serting “this Act; and”; and

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

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

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

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

16 (e) NONPROFIT RESPITE CENTERS.—Section 313 of
17 the McKinney-Vento Homeless Assistance Act (42 U.S.C.
18 11343) is amended—

19 (1) in subsection (a)—

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

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

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

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

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

10 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
11 is authorized to be appropriated to the Director to award
12 grants to the National Board to carry out subsection
13 (a)(4) \$100,000,000 for fiscal year 2019 and each fiscal
14 year thereafter.”.

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

16 (a) IN GENERAL.—The Secretary of Homeland Secu-
17 rity shall provide access to counsel for all aliens detained
18 in a facility under the supervision of U.S. Immigration
19 and Customs Enforcement, U.S. Customs and Border
20 Protection, or the Department of Health and Human
21 Services, or in any private facility that contracts with the
22 Federal Government to house, detain, or hold aliens.

23 (b) AUTHORIZATION OF APPROPRIATIONS FOR
24 LEGAL ORIENTATION PROGRAM.—There is authorized to
25 be appropriated to carry out the Legal Orientation Pro-

1 gram of the Executive Office for Immigration Review
2 \$55,000,000 for fiscal year 2019 and each fiscal year
3 thereafter.

4 (c) CLARIFICATION REGARDING THE AUTHORITY OF
5 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
6 ALIENS IN IMMIGRATION PROCEEDINGS.—

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

10 **“SEC. 292. RIGHT TO COUNSEL.**

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

20 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
21 ALIEN CHILDREN.—

22 “(1) IN GENERAL.—In any removal proceeding
23 and in any appeal proceeding before the Attorney
24 General from any such removal proceeding, an unac-
25 companied alien child (as defined in section 462(g)

1 of the Homeland Security Act on 2002 (6 U.S.C.
2 279(g)) shall be represented by Government-ap-
3 pointed counsel, at Government expense.

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

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

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

23 “(c) PRO BONO REPRESENTATION.—

24 “(1) IN GENERAL.—To the maximum extent
25 practicable, the Attorney General shall make every

1 effort to use the services of competent counsel who
2 agree to provide representation to such children
3 under subsection (b) without charge.

4 “(2) DEVELOPMENT OF NECESSARY INFRA-
5 STRUCTURES AND SYSTEMS.—The Attorney General
6 shall develop the necessary mechanisms to identify
7 counsel available to provide pro bono legal assistance
8 and representation to children under subsection (b)
9 and to recruit such counsel.

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

21 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-
22 TION OF CHILDREN.—

23 “(1) DEVELOPMENT OF GUIDELINES.—The Ex-
24 ecutive Office for Immigration Review, in consulta-
25 tion with voluntary agencies and national experts,

1 shall develop model guidelines for the legal represen-
2 tation of alien children in immigration proceedings,
3 which shall be based on the children’s asylum guide-
4 lines, the American Bar Association Model Rules of
5 Professional Conduct, and other relevant domestic or
6 international sources.

7 “(2) PURPOSE OF GUIDELINES.—The guide-
8 lines developed under paragraph (1) shall be de-
9 signed to help protect each child from any individual
10 suspected of involvement in any criminal, harmful,
11 or exploitative activity associated with the smuggling
12 or trafficking of children, while ensuring the fairness
13 of the removal proceeding in which the child is in-
14 volved.

15 “(f) DUTIES OF COUNSEL.—Counsel provided under
16 this section shall—

17 “(1) represent the unaccompanied alien child in
18 all proceedings and matters relating to the immigra-
19 tion status of the child or other actions involving the
20 Department of Homeland Security;

21 “(2) appear in person for all individual merits
22 hearings before the Executive Office for Immigration
23 Review and interviews involving the Department of
24 Homeland Security;

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

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

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

9 “(1) any duties, responsibilities, disciplinary, or
10 ethical responsibilities an attorney may have to his
11 or her client under State law;

12 “(2) the admission requirements under State
13 law; or

14 “(3) any other State law pertaining to the ad-
15 mission to the practice of law in a particular juris-
16 diction.”.

17 (2) RULEMAKING.—The Attorney General shall
18 promulgate regulations to implement section 292 of
19 the Immigration and Nationality Act, as added by
20 paragraph (1), in accordance with the requirements
21 set forth in section 3006A of title 18, United States
22 Code.

23 **SEC. 8. IMMIGRATION COURT IMPROVEMENTS.**

24 (a) HIRING OF IMMIGRATION JUDGES.—

1 (1) IN GENERAL.—During fiscal year 2019, the
2 Attorney General shall increase the total number of
3 immigration judges to adjudicate pending cases and
4 efficiently process future cases by not fewer than 75
5 judges.

6 (2) QUALIFICATIONS.—The Attorney General
7 shall ensure that each immigration judge hired
8 under this subsection is—

9 (A) highly qualified; and

10 (B) trained to conduct fair and impartial
11 hearings in accordance with applicable due
12 process requirements.

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

19 (A) has equivalent subject-matter expertise
20 based on experience in a nonprofit, private
21 practice, or academic setting; but

22 (B) does not have previous Federal service.

23 (b) IMMIGRATION COURT STAFF.—During fiscal year
24 2019, the Attorney General shall—

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

4 (2) increase the total number of support staff
5 for immigration judges, including legal assistants
6 and interpreters, by 300.

7 (c) SUPPORT STAFF; OTHER RESOURCES.—The At-
8 torney General shall ensure that the Executive Office for
9 Immigration Review has sufficient support staff, adequate
10 technological and security resources, and appropriate fa-
11 cilities to conduct the immigration proceedings required
12 under Federal law.

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

20 (e) DOCKET MANAGEMENT FOR RESOURCE CON-
21 SERVATION.—Notwithstanding any opposition from the
22 Secretary of Homeland Security or the Attorney General,
23 immigration judges may administratively close cases, and
24 the Board of Immigration Appeals may remand cases for

1 administrative closure, if an individual in removal pro-
2 ceedings—

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

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

8 (f) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as may be
10 necessary to carry out this section.

11 **SEC. 9. ACCOUNTABILITY AND OVERSIGHT.**

12 (a) WEEKLY REPORTS.—

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

19 (A) The total number of children in the
20 custody of the Secretary of Homeland Security
21 and the Secretary of Health and Human Serv-
22 ices, disaggregated by—

23 (i) age;

1 (ii) the number of children in the cus-
2 tody of the Secretary of Homeland Secu-
3 rity;

4 (iii) the number of children in the cus-
5 tody of the Secretary of Health and
6 Human Services;

7 (iv) the location of the detention fa-
8 cilities in which such children are housed,
9 including city and State; and

10 (v) average number of days in such
11 custody.

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

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

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

23 (D)(i) Subject to clause (ii), the total num-
24 ber of pregnant women in such custody,
25 disaggregated by—

1 (I) the number of such women in the
2 custody of the Secretary of Homeland Se-
3 curity;

4 (II) the number of such women in the
5 custody of the Secretary of Health and
6 Human Services; and

7 (III) the location of detention facilities
8 in which such pregnant women are housed,
9 including city and State.

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

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

19 (2) MONTHLY PUBLICATION.—Not less fre-
20 quently than monthly, the Secretary of Homeland
21 Security shall publish on an internet website of the
22 Department of Homeland Security that is available
23 to the public a summary of the reports under para-
24 graph (1) for the preceding one-month period.

1 (b) MANDATORY ACCESS TO DETENTION FACILITIES
2 FOR MEMBERS OF CONGRESS.—

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

13 (A) the name of the facility; and

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

16 (2) ACCOMPANYING MEMBERS OF THE
17 PRESS.—

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

23 (B) LIMITATIONS.—

24 (i) STILL OR VIDEO CAMERAS.—The
25 Secretary concerned shall not be required

1 to allow a member of the press to enter a
2 facility under subparagraph (A) with a still
3 or video camera.

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

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

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

17 (i) not more than five Members of
18 Congress; and

19 (ii) accompanying members of the
20 press under paragraph (2); and

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

24 (i) not more than ten Members of
25 Congress; and

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

3 (4) DEFINITION OF SECRETARY CONCERNED.—

4 In this subsection, the term “Secretary concerned”
5 means, as applicable—

6 (A) the Secretary of Homeland Security;

7 or

8 (B) the Secretary of Health and Human
9 Services.