

116TH CONGRESS
1ST SESSION

S. 388

To reduce the ability of U.S. Immigration and Customs Enforcement to engage in inappropriate civil immigration enforcement actions that harm unaccompanied alien children and to ensure the safety and welfare of unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

Ms. HARRIS (for herself, Mr. WYDEN, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. SANDERS, Mr. MARKEY, Ms. CORTEZ MASTO, Mr. BOOKER, Mr. MERKLEY, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reduce the ability of U.S. Immigration and Customs Enforcement to engage in inappropriate civil immigration enforcement actions that harm unaccompanied alien children and to ensure the safety and welfare of unaccompanied alien children.

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.**

4 This Act may be cited as the “Families, Not Facili-
5 ties Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) On May 13, 2018, a Memorandum of
4 Agreement between U.S. Immigration and Customs
5 Enforcement, U.S. Customs and Border Patrol of
6 the Department of Homeland Security, and the Of-
7 fice of Refugee Resettlement of the Department of
8 Health and Human Services went into effect to
9 allow for intergovernmental sharing of personal in-
10 formation about unaccompanied alien children, their
11 prospective sponsors, and adult members of sponsor
12 households.

13 (2) U.S. Immigration and Customs Enforce-
14 ment is using information obtained under the Memo-
15 randum of Agreement to conduct civil immigration
16 enforcement actions against individuals residing in
17 the homes of prospective sponsors of unaccompanied
18 alien children.

19 (3) These civil immigration enforcement actions
20 have discouraged prospective sponsors of unaccom-
21 panied alien children, including family members,
22 from coming forward to resettle children in the com-
23 munity as they pursue lawful claims for humani-
24 tarian protection.

25 (4) As a result of the lack of qualified sponsors,
26 unprecedented numbers of unaccompanied alien chil-

1 dren (approximately 14,600 in December 2018) are
2 being held in shelters overseen by the Office of Ref-
3 ugee Resettlement as of the date of enactment of
4 this Act.

5 (5) The Office of Refugee Resettlement is
6 struggling to accommodate the growing number of
7 unaccompanied alien children in its shelter network,
8 resorting to placing children in temporary “emer-
9 gency influx” shelters. The Office contracted with
10 BCFS to care for more than 6,200 children between
11 June 2018 and January 2019 in a temporary shelter
12 at the Tornillo-Guadalupe Land Port of Entry in
13 Texas, a facility that the New York Times and other
14 media sources described as a “tent city”, and an-
15 nounced plans in January 2019 to nearly double the
16 number of children held in a previously closed tem-
17 porary shelter in Homestead, Florida.

18 (6) Temporary shelters are inappropriate loca-
19 tions to hold unaccompanied alien children because
20 such shelters—

21 (A) have reduced standards of care, includ-
22 ing insufficient educational services;

23 (B) offer limited access to clinical and
24 legal services; and

1 (C) are not cost-effective, resulting in the
2 expenditure of more than \$750 per day in tax-
3 payer funds for each child housed in Tornillo
4 shelter, for example.

5 (7) Facilities operated under a contract with
6 the Office of Refugee Resettlement have faced unac-
7 ceptable allegations of abuse and neglect of unac-
8 companied alien children that merit additional inves-
9 tigation and oversight.

10 (8) The Office of Refugee Resettlement is le-
11 gally required to place children in the least restric-
12 tive setting that is in the best interest of the child.

13 (9) Services offered at facilities funded by the
14 Office of Refugee Resettlement are required to in-
15 clude classroom education, mental and medical
16 health services, case management, socialization and
17 recreation activities, and family reunification serv-
18 ices that facilitate the safe and timely release of un-
19 accompanied alien children to family members or
20 other sponsors that can care for them.

21 (10) Providing legal and case management serv-
22 ices to all children while they are housed in a facility
23 funded by the Office of Refugee Resettlement and
24 after their release from such a facility is a cost-effec-
25 tive and humane way of ensuring that the Office of

1 Refugee Resettlement meets its statutory obligation
2 to place children in least restrictive settings.

3 **SEC. 3. USE OF SPONSORSHIP INFORMATION.**

4 (a) IN GENERAL.—Section 235(c)(3) of the William
5 Wilberforce Trafficking Victims Protection Reauthoriza-
6 tion Act of 2008 (8 U.S.C. 1232(c)(3)) is amended—

7 (1) in subparagraph (A), by inserting “In mak-
8 ing such a determination, the Secretary may not
9 consider the immigration status of the proposed cus-
10 todian.” after “well-being.”; and

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

12 “(D) PROHIBITING USE OF CERTAIN IN-
13 FORMATION.—The Secretary of Homeland Se-
14 curity may not use information provided by an
15 unaccompanied alien child or information ini-
16 tially obtained by the Secretary of Health and
17 Human Services to make a suitability deter-
18 mination under subparagraph (A), a home
19 study determination under subparagraph (B),
20 or a secure facility determination under para-
21 graph (2)(A) for the purpose of apprehending,
22 detaining, or removing from the United
23 States—

24 “(i) the unaccompanied alien child;

1 “(ii) the proposed custodian or cur-
2 rent custodian;

3 “(iii) a resident of the home in which
4 the proposed custodian or current custo-
5 dian resides;

6 “(iv) the proposed sponsor or current
7 sponsor; or

8 “(v) a resident of the home in which
9 the proposed sponsor or current sponsor
10 resides.”.

11 (b) RULES OF CONSTRUCTION.—

12 (1) FLORES SETTLEMENT AGREEMENT.—The
13 amendments made by subsection (a) may not be con-
14 strued to supersede the terms of the stipulated set-
15 tlement agreement filed on January 17, 1997, in the
16 United States District Court for the Central District
17 of California in Flores v. Reno, CV 85–4544–RJK,
18 (commonly known as the “Flores settlement agree-
19 ment”).

20 (2) CHILD WELFARE.—The amendments made
21 by subsection (a) may not be construed to prevent
22 the Secretary of Homeland Security from using in-
23 formation obtained by the Secretary of Health and
24 Human Services to investigate or report to the ap-

1 appropriate law enforcement agency or child welfare
2 agency instances of trafficking, abuse, or neglect.

3 **SEC. 4. LIMITATION ON USE OF FUNDS FOR ENFORCE-**
4 **MENT, DETENTION, AND REMOVAL OPER-**
5 **ATIONS.**

6 No Federal funds may be used by U.S. Immigration
7 and Customs Enforcement for any enforcement, detention,
8 or removal activity that violates section 235(c)(3) of the
9 William Wilberforce Trafficking Victims Protection Reau-
10 thorization Act of 2008, as amended by section 3(a).

11 **SEC. 5. TRANSFER OF U.S. IMMIGRATION AND CUSTOMS EN-**
12 **FORCEMENT FUNDING.**

13 Of the amount appropriated for fiscal year 2019 to
14 U.S. Immigration and Customs Enforcement for enforce-
15 ment and removal operations—

16 (1) \$30,000,000 shall be transferred to the De-
17 partment of Justice to expand the efforts of the
18 Federal Bureau of Investigation’s Violent Crimes
19 Against Children program to investigate criminal
20 networks involved in child trafficking;

21 (2) \$180,000,000 shall be transferred to the
22 Office of Refugee Resettlement to provide the post-
23 release legal, case management, and child advocate
24 services described in section 6; and

1 (3) \$10,000,000 shall be transferred to the Ad-
2 ministration for Children and Families to bolster the
3 efforts of the Task Force to Prevent and End
4 Human Trafficking.

5 **SEC. 6. ENSURING THE SAFETY OF UNACCOMPANIED**
6 **ALIEN CHILDREN.**

7 (a) **DEFINED TERM.**—In this section, the term “post-
8 release case management services” means services that—

9 (1) are provided by a social worker, employed
10 by a nonprofit entity, who meets with the child indi-
11 vidually and with the family to develop an individ-
12 ualized service plan; and

13 (2) allow children to successfully transition into
14 their communities by—

15 (A) assisting with school enrollment and
16 acculturation;

17 (B) locating medical and therapeutic serv-
18 ices;

19 (C) making referrals to area legal services;
20 and

21 (D) navigating new family settings and
22 other individual needs.

23 (b) **REQUIRED SERVICES.**—The Office of Refugee
24 Resettlement shall—

1 (1) provide post-release case management to all
2 children upon release or as the need arises for the
3 duration of their immigration proceedings; and

4 (2) facilitate efforts to connect every unaccom-
5 panied child, including each child with a sponsor,
6 with legal representation for his or her immigration
7 proceedings.

8 (c) THE OFFICE OF REFUGEE RESETTLEMENT AD-
9 VISORY COMMITTEE ON SHELTERS FOR UNACCOMPANIED
10 ALIEN CHILDREN.—

11 (1) ESTABLISHMENT.—The Secretary of Health
12 and Human Services, in compliance with the Federal
13 Advisory Committee Act (5 U.S.C. App.), shall im-
14 mediately establish the Advisory Committee on Shel-
15 ters for Unaccompanied Alien Children (referred to
16 in this subsection as the “Advisory Committee”) to
17 advise the Office of Refugee Resettlement on mat-
18 ters regarding shelters and placements for unaccom-
19 panied alien children relating to education, immigra-
20 tion law, physical and mental health, trauma-in-
21 formed social work services, youth shelter manage-
22 ment, and immigration detention reform.

23 (2) COMPOSITION AND TERM.—

1 (A) APPOINTMENT.—The Secretary shall
2 appoint 14 individuals to serve on the Advisory
3 Committee for 2-year terms.

4 (B) PREREQUISITES.—

5 (i) IN GENERAL.—Each member of
6 the Advisory Committee shall be employed
7 by a nonprofit entities in the field of—

8 (I) education;

9 (II) immigration law;

10 (III) physical and mental health
11 of children and youth;

12 (IV) trauma-informed child wel-
13 fare social work services;

14 (V) youth shelter management;

15 (VI) cultural competency; or

16 (VII) immigration detention re-
17 form.

18 (ii) REPRESENTATION.—At least 2
19 members of the Advisory Committee shall
20 represent each of the fields set forth in
21 clause (i).

22 (3) INVESTIGATIVE AUTHORITY.—

23 (A) INSPECTIONS.—Members of the Advi-
24 sory Committee may conduct unannounced in-
25 spections of all shelters contracted with the Of-

1 fice of Refugee Resettlement to hold unaccom-
2 panied alien children.

3 (B) INFORMATION SHARING.—The Office
4 of Refugee Resettlement shall provide the Advi-
5 sory Committee with access to such materials
6 as may be necessary to effectively advocate for
7 the best interest of children in the custody of
8 the Office of Refugee Resettlement, subject to
9 applicable statutes and regulations.

10 (4) CONSULTATIONS.—The Advisory Committee
11 shall consult with, and receive recommendations
12 from—

13 (A) the American Medical Association;

14 (B) the American Academy of Pediatrics;

15 (C) the National Association of Social
16 Workers;

17 (D) the American Bar Association Center
18 on Children and the Law;

19 (E) the American Immigration Lawyers
20 Association; and

21 (F) other medical, child welfare, and legal
22 experts.

23 (5) REPORTS.—

24 (A) INTERIM REPORT.—Not later than 6
25 months after the establishment of the Advisory

1 Committee under paragraph (1), the Advisory
2 Committee shall release to the public an interim
3 report outlining the Advisory Committee's in-
4 vestigations and recommendations regarding
5 Office of Refugee Resettlement shelters for un-
6 accompanied alien children and submit such re-
7 port to—

8 (i) the Secretary of Health and
9 Human Services;

10 (ii) the Committee on Health, Edu-
11 cation, Labor, and Pensions of the Senate;

12 (iii) the Committee on Homeland Se-
13 curity and Governmental Affairs of the
14 Senate;

15 (iv) the Committee on the Judiciary of
16 the Senate;

17 (v) the Committee on Energy and
18 Commerce of the House of Representa-
19 tives;

20 (vi) the Committee on Oversight and
21 Reform of the House of Representatives;
22 and

23 (vii) the Committee on the Judiciary
24 of the House of Representatives.

1 (B) FINAL REPORT.—Not later than 1
2 year after the establishment of the Advisory
3 Committee under paragraph (1), the Advisory
4 Committee shall release to the public, and sub-
5 mit to the recipients of the interim report under
6 subparagraph (A), a final report that outlines
7 the Advisory Committee’s investigations and
8 recommendations regarding Office of Refugee
9 Resettlement shelters for unaccompanied alien
10 children.

11 (6) SAVINGS PROVISION.—Nothing in this sub-
12 section may be construed to preempt any Federal
13 agency from investigating allegations of mistreat-
14 ment and abuse of unaccompanied alien children in
15 facilities overseen by the Department of Health and
16 Human Services.

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