

118TH CONGRESS  
2D SESSION

# S. 4723

To limit the separation of families at or near ports of entry.

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## IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2024

Ms. BUTLER (for herself, Mr. SCHATZ, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. FETTERMAN, Ms. HIRONO, Mr. KING, Mr. LUJÁN, Mr. MERKLEY, Ms. ROSEN, Mr. SANDERS, Mrs. SHAHEEN, Mr. VAN HOLLEN, Ms. WARREN, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To limit the separation of families at or near ports of entry.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Keep Families Together Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Limitation on the separation of families.
- Sec. 4. Recommendations for separation by agents or officers.
- Sec. 5. Presumptions.

Sec. 6. Required policy for locating separated children.  
 Sec. 7. Required information for separated families.  
 Sec. 8. Annual report on family separation.  
 Sec. 9. Clarifications.  
 Sec. 10. GAO report on prosecution of asylum seekers.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

6 (2) CHILD.—The term “child” means an indi-  
 7 vidual who—

8 (A) has not reached 18 years of age; and

9 (B) has no permanent immigration status  
 10 in the United States.

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

13 (A) the Committee on the Judiciary of the  
 14 Senate;

15 (B) the Committee on Health, Education,  
 16 Labor, and Pensions of the Senate;

17 (C) the Committee on the Judiciary of the  
 18 House of Representatives; and

19 (D) the Committee on Education and the  
 20 Workforce of the House of Representatives.

21 (4) DANGER OF ABUSE OR NEGLECT AT THE  
 22 HANDS OF THE PARENT OR LEGAL GUARDIAN.—The  
 23 term “danger of abuse or neglect at the hands of the

parent or legal guardian” does not include dangers directly relating to migrating to or crossing the United States border.

(5) DESIGNATED AGENCY.—The term “designated agency” means—

(A) the Department of Homeland Security;

(B) the Department of Justice; and

(C) the Department of Health and Human Services.

(6) FINDING.—The term “finding” means an individualized written assessment or screening by a trained agent or officer that includes a consultation with a child welfare specialist that has been formalized in accordance with sections 3(c), 4, 5, and 9.

(7) SECRETARY.—Unless otherwise specified, the term “Secretary” means the Secretary of Homeland Security.

**SEC. 3. LIMITATION ON THE SEPARATION OF FAMILIES.**

(a) IN GENERAL.—An agent or officer of a designated agency shall be prohibited from removing a child from his or her parent or legal guardian, at or near the port of entry or within 100 miles of the border of the United States, unless—

(1) a State court, authorized under State law, terminates the rights of a parent or legal guardian,

1 determines that it is in the best interests of the child  
2 to be removed from his or her parent or legal guard-  
3 ian, in accordance with the Adoption and Safe Fam-  
4 ilies Act of 1997 (Public Law 105–89), or makes  
5 any similar determination that is legally authorized  
6 under State law;

7 (2) an official from the State or county child  
8 welfare agency with expertise in child trauma and  
9 development makes a best interests determination  
10 that it is in the best interests of the child to be re-  
11 moved from his or her parent or legal guardian be-  
12 cause the child is in danger of abuse or neglect at  
13 the hands of the parent or legal guardian, or is a  
14 danger to herself or others; or

15 (3) the Chief Patrol Agent or the Area Port Di-  
16 rector, in his or her official and undelegated capac-  
17 ity, authorizes separation upon the recommendation  
18 by an agent or officer and based on a finding that—

19 (A) the child is a victim of trafficking or  
20 is at significant risk of becoming a victim of  
21 trafficking;

22 (B) there is a strong likelihood that the  
23 adult is not the parent or legal guardian of the  
24 child; or

1 (C) the child is in danger of abuse or ne-  
2 glect at the hands of the parent or legal guard-  
3 ian, or is a danger to themselves or others.

4 (b) PROHIBITION ON SEPARATION.—An agency may  
5 not remove a child from a parent or legal guardian solely  
6 for the policy goal of—

7 (1) deterring individuals from migrating to the  
8 United States; or

9 (2) promoting compliance with civil immigration  
10 laws.

11 (c) DOCUMENTATION REQUIRED.—The Secretary  
12 shall ensure that any separation authorized under sub-  
13 section (a)(3)—

14 (1) is documented in writing; and

15 (2) includes (at a minimum)—

16 (A) the reason for such separation; and

17 (B) the stated evidence for such separa-  
18 tion.

19 **SEC. 4. RECOMMENDATIONS FOR SEPARATION BY AGENTS**  
20 **OR OFFICERS.**

21 (a) IN GENERAL.—Not later than 180 days after the  
22 date of the enactment of this Act, the Secretary, in con-  
23 sultation with the Secretary of Health and Human Serv-  
24 ices, shall develop training and guidance, with an empha-  
25 sis on the best interests of the child, childhood trauma,

1 attachment, and child development, for use by the agents  
2 and officers, in order to standardize the implementation  
3 of section 3(a)(3).

4 (b) ANNUAL REVIEW.—Not less frequently than an-  
5 nually, the Secretary of Health and Human Services  
6 shall—

7 (1) review the guidance developed pursuant to  
8 subsection (a); and

9 (2) submit recommendations to the Secretary to  
10 ensure such guidance is in accordance with current  
11 evidence and best practices in child welfare, child de-  
12 velopment, and childhood trauma.

13 (c) REQUIREMENT.—The guidance developed pursu-  
14 ant to subsection (a) shall incorporate the presumptions  
15 described in section 5.

16 (d) ADDITIONAL REQUIREMENTS.—

17 (1) EVIDENCE-BASED.—The guidance and  
18 training developed pursuant to this section shall in-  
19 corporate evidence-based practices.

20 (2) TRAINING REQUIRED.—

21 (A) AGENTS AND OFFICERS.—All agents  
22 and officers of designated agencies, upon hire,  
23 and annually thereafter, shall complete training  
24 on adherence to the guidance developed pursu-  
25 ant to subsection (a).

1 (B) MANAGEMENT.—All Chief Patrol  
 2 Agents and Area Port Directors, upon hire, and  
 3 annually thereafter, shall complete—

4 (i) training on adherence to the guid-  
 5 ance developed pursuant to subsection (a);  
 6 and

7 (ii) 90 minutes of child welfare prac-  
 8 tice training that is evidence-based and  
 9 trauma-informed.

10 **SEC. 5. PRESUMPTIONS.**

11 In this Act—

12 (1) there shall be a strong presumption in favor  
 13 of family unity;

14 (2) the Secretary shall ensure, to the maximum  
 15 extent practicable, that sibling groups remain intact;  
 16 and

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

19 **SEC. 6. REQUIRED POLICY FOR LOCATING SEPARATED**  
 20 **CHILDREN.**

21 (a) DEVELOPMENT.—

22 (1) IN GENERAL.—The Secretary, in consulta-  
 23 tion with the Secretary of Health and Human Serv-  
 24 ices, immigrant advocacy organizations, child welfare  
 25 organizations, and State child welfare agencies, shall

1       develop public guidance that describes, with speci-  
 2       ficity, the manner in which a parent or legal guard-  
 3       ian may locate a child who was separated from the  
 4       parent or legal guardian pursuant to section 3(a).

5           (2) PUBLICATION.—Not later than 180 days  
 6       after the date of the enactment of this Act, the Sec-  
 7       retary shall publish the final public guidance devel-  
 8       oped pursuant to paragraph (1).

9           (b) WRITTEN NOTIFICATION.—The Secretary shall  
 10      provide each parent or legal guardian who is separated  
 11      from a child pursuant to section 3(a) with written notice  
 12      of the public guidance to locate the separated child.

13          (c) LANGUAGE ACCESS.—All guidance developed pur-  
 14      suant to subsection (a) shall be available—

15           (1) in English and Spanish; and

16           (2) at the request of a parent or legal guardian,  
 17      in the language or manner that is understandable by  
 18      such parent or legal guardian.

19      **SEC. 7. REQUIRED INFORMATION FOR SEPARATED FAMI-**  
 20                           **LIES.**

21      Not less frequently than monthly, the Secretary shall  
 22      provide the parent or legal guardian of a child from whom  
 23      he or she was separated with—

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



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

5           (3) information about changes to such child's  
6       immigration status; and

7           (4) other information about such child, which  
8       shall be designed to promote and maintain family re-  
9       unification, as determined by the Secretary.

10 **SEC. 8. ANNUAL REPORT ON FAMILY SEPARATION.**

11       Not later than 1 year after the date of the enactment  
12       of this Act, and annually thereafter, the Secretary shall  
13       submit a report to the committees of jurisdiction that de-  
14       scribes each instance in which a child was separated from  
15       a parent or legal guardian and includes, for each such in-  
16       stance—

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

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

19           (3) the length of separation;

20           (4) whether the adult was charged with a crime,  
21       and if the adult was charged with a crime, the type  
22       of crime;

23           (5) whether the adult made a claim for asylum,  
24       expressed a fear to return, or applied for other im-  
25       migration relief;

1 (6) whether the adult was prosecuted if charged  
2 with a crime and the associated outcome of such  
3 charges;

4 (7) the stated reason for, and evidence in sup-  
5 port of, the separation;

6 (8) if the child was part of a sibling group at  
7 the time of separation, whether the sibling group has  
8 had physical contact and visitation;

9 (9) whether the child was rendered an unac-  
10 companied alien child; and

11 (10) other information in the Secretary's discre-  
12 tion.

13 **SEC. 9. CLARIFICATIONS.**

14 (a) PARENTAL RIGHTS.—

15 (1) IN GENERAL.—If a child is separated from  
16 a parent or legal guardian, and a State court has  
17 not made a determination that the parental rights of  
18 such parent or legal guardian have been terminated,  
19 there is a presumption that—

20 (A) the parental rights remain intact; and

21 (B) such separation does not constitute an  
22 affirmative determination of abuse or neglect  
23 under Federal or State law.

24 (2) RULE OF CONSTRUCTION.—Nothing in this  
25 Act may be construed to limit any independent

1 rights that a parent, legal guardian, or child may  
2 have under any source of law, including the Settle-  
3 ment Agreement in *Ms. L. v. ICE*, 18–cv–00428  
4 (S.D. Cal. Dec. 11, 2023).

5 (b) RULES OF CONSTRUCTION.—

6 (1) FEDERAL LAW.—Nothing in this Act may  
7 be construed to supersede or modify Federal child  
8 welfare law, as applicable, including the Adoption  
9 and Safe Families Act of 1997 (Public Law 105–  
10 89).

11 (2) STATE LAW.—Nothing in this Act may be  
12 construed to supersede or modify State child welfare  
13 laws, as applicable.

14 **SEC. 10. GAO REPORT ON PROSECUTION OF ASYLUM SEEK-**  
15 **ERS.**

16 (a) STUDY.—The Comptroller General of the United  
17 States shall conduct a study of the prosecution of asylum  
18 seekers during the period beginning on January 1, 2014  
19 and ending on December 31, 2023, including—

20 (1) the total number of persons who claimed a  
21 fear of persecution, received a favorable credible fear  
22 determination, and were referred for prosecution;

23 (2) an overview and analysis of the metrics  
24 used by the Department of Homeland Security and

1 the Department of Justice to track the number of  
2 asylum seekers referred for prosecution;

3 (3) the total number of asylum seekers referred  
4 for prosecution, a breakdown and description of the  
5 criminal charges filed against asylum seekers during  
6 such period, and a breakdown and description of the  
7 convictions secured;

8 (4) the total number of asylum seekers who  
9 were separated from their children as a result of  
10 being referred for prosecution;

11 (5) a breakdown of the resources spent on pros-  
12 ecuting asylum seekers during such period, as well  
13 as any diversion of resources required to prosecute  
14 asylum seekers, and any costs imposed on States  
15 and localities;

16 (6) the total number of asylum seekers who  
17 were referred for prosecution and also went through  
18 immigration proceedings; and

19 (7) the total number of asylum seekers referred  
20 for prosecution who were deported before going  
21 through immigration proceedings.

22 (b) REPORT.—Not later than 1 year after the date  
23 of the enactment of this Act, the Comptroller General shall

- 1 submit a report to Congress that includes the results of
- 2 the study conducted pursuant to subsection (a).

