

115TH CONGRESS
2D SESSION

S. 3624

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

NOVEMBER 14, 2018

Ms. HARRIS (for herself, Mr. WYDEN, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. SANDERS, and Mr. MARKEY) 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 2018”.

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 (nearly 13,400 as of October 2018) are being
2 held in shelters overseen by the Office of Refugee
3 Resettlement as of the date of enactment of this Act.

4 (5) The Office of Refugee Resettlement is
5 struggling to accommodate the growing number of
6 unaccompanied alien children in its shelter network
7 and announced, in September 2018, that it would
8 more than triple the number of beds in a temporary
9 “emergency influx” shelter at the Tornillo-Guadalupe
10 Land Port of Entry in Texas.

11 (6) Temporary shelters, such as Tornillo, a facility
12 that the New York Times and other media
13 sources describe as a “tent city”, are inappropriate
14 locations to hold unaccompanied alien children because
15 such shelters—

16 (A) have reduced standards of care, including
17 insufficient educational services;

18 (B) offer limited access to clinical and
19 legal services; and

20 (C) are not cost-effective, resulting in the
21 expenditure of more than \$750 per day in taxpayer
22 funds for each child housed in Tornillo
23 shelter.

24 (7) Facilities operated under a contract with
25 the Office of Refugee Resettlement have faced unac-

ceptable allegations of abuse and neglect of unaccompanied alien children that merit additional investigation and oversight.

(8) The Office of Refugee Resettlement is legally required to place children in the least restrictive setting that is in the best interest of the child.

(9) Services offered at facilities funded by the Office of Refugee Resettlement are required to include classroom education, mental and medical health services, case management, socialization and recreation activities, and family reunification services that facilitate the safe and timely release of unaccompanied alien children to family members or other sponsors that can care for them.

(10) Providing legal and case management services to all children while they are housed in a facility funded by the Office of Refugee Resettlement and after their release from such a facility is a cost-effective and humane way of ensuring that the Office of Refugee Resettlement meets its statutory obligation to place children in least restrictive settings.

SEC. 3. USE OF SPONSORSHIP INFORMATION.

(a) IN GENERAL.—Section 235(c)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(c)(3)) is amended—

(1) in subparagraph (A), by inserting “In making such a determination, the Secretary may not consider the immigration status of the proposed custodian.” after “well-being.”; and

(2) by adding at the end the following:

“(D) PROHIBITING USE OF CERTAIN INFORMATION.—The Secretary of Homeland Security may not use information provided by an unaccompanied alien child or information initially obtained by the Secretary of Health and Human Services to make a suitability determination under subparagraph (A), a home study determination under subparagraph (B), or a secure facility determination under paragraph (2)(A) for the purpose of apprehending, detaining, or removing from the United States—

“(i) the unaccompanied alien child;

“(ii) the proposed custodian or current custodian;

“(iii) a resident of the home in which the proposed custodian or current custodian resides;

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

1 “(v) a resident of the home in which
 2 the proposed sponsor or current sponsor
 3 resides.”.

4 (b) RULES OF CONSTRUCTION.—

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

13 (2) CHILD WELFARE.—The amendments made
 14 by subsection (a) may not be construed to prevent
 15 the Secretary of Homeland Security from using in-
 16 formation obtained by the Secretary of Health and
 17 Human Services to investigate or report to the ap-
 18 propriate law enforcement agency or child welfare
 19 agency instances of trafficking, abuse, or neglect.

20 **SEC. 4. LIMITATION ON USE OF FUNDS FOR ENFORCE-**
 21 **MENT, DETENTION, AND REMOVAL OPER-**
 22 **ATIONS.**

23 No Federal funds may be used by U.S. Immigration
 24 and Customs Enforcement for any enforcement, detention,
 25 or removal activity that violates section 235(c)(3) of the

1 William Wilberforce Trafficking Victims Protection Reau-
 2 thorization Act of 2008, as amended by section 3(a).

3 **SEC. 5. TRANSFER OF U.S. IMMIGRATION AND CUSTOMS EN-**
 4 **FORCEMENT FUNDING.**

5 Of the amount appropriated for fiscal year 2019 to
 6 U.S. Immigration and Customs Enforcement for enforce-
 7 ment and removal operations—

8 (1) \$30,000,000 shall be transferred to the De-
 9 partment of Justice to expand the efforts of the
 10 Federal Bureau of Investigation’s Violent Crimes
 11 Against Children program to investigate criminal
 12 networks involved in child trafficking;

13 (2) \$180,000,000 shall be transferred to the
 14 Office of Refugee Resettlement to provide the post-
 15 release legal, case management, and child advocate
 16 services described in section 6; and

17 (3) \$10,000,000 shall be transferred to the Ad-
 18 ministration for Children and Families to bolster the
 19 efforts of the Task Force to Prevent and End
 20 Human Trafficking.

21 **SEC. 6. ENSURING THE SAFETY OF UNACCOMPANIED**
 22 **ALIEN CHILDREN.**

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

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

5 (2) allow children to successfully transition into
6 their communities by—

7 (A) assisting with school enrollment and
8 acculturation;

9 (B) locating medical and therapeutic serv-
10 ices;

11 (C) making referrals to area legal services;
12 and

13 (D) navigating new family settings and
14 other individual needs.

15 (b) REQUIRED SERVICES.—The Office of Refugee
16 Resettlement shall—

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

20 (2) facilitate efforts to connect every unaccom-
21 panied child, including each child with a sponsor,
22 with legal representation for his or her immigration
23 proceedings.

1 (c) THE OFFICE OF REFUGEE RESETTLEMENT AD-
 2 VISORY COMMITTEE ON SHELTERS FOR UNACCOMPANIED
 3 ALIEN CHILDREN.—

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

16 (2) COMPOSITION AND TERM.—

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

20 (B) PREREQUISITES.—

21 (i) IN GENERAL.—Each member of
 22 the Advisory Committee shall be employed
 23 by a nonprofit entities in the field of—

24 (I) education;

25 (II) immigration law;

- 1 (III) physical and mental health
 2 of children and youth;
 3 (IV) trauma-informed child wel-
 4 fare social work services;
 5 (V) youth shelter management;
 6 (VI) cultural competency; or
 7 (VII) immigration detention re-
 8 form.

9 (ii) REPRESENTATION.—At least 2
 10 members of the Advisory Committee shall
 11 represent each of the fields set forth in
 12 clause (i).

13 (3) INVESTIGATIONS AUTHORITY.—

14 (A) INSPECTIONS.—Members of the Advi-
 15 sory Committee may conduct unannounced in-
 16 spections of all shelters contracted with the Of-
 17 fice of Refugee Resettlement to hold unaccom-
 18 panied alien children.

19 (B) INFORMATION SHARING.—The Office
 20 of Refugee Resettlement shall provide such in-
 21 formation to the Advisory Committee as the
 22 Advisory Committee may request, subject to the
 23 same confidential use and nondisclosure re-
 24 quirements that apply to the Office of Refugee
 25 Resettlement.

1 (4) CONSULTATIONS.—The Advisory Committee
2 shall consult with, and receive recommendations
3 from—

4 (A) the American Medical Association;

5 (B) the American Academy of Pediatrics;

6 (C) the National Association of Social
7 Workers;

8 (D) the American Bar Association Center
9 on Children and the Law;

10 (E) the American Immigration Lawyers
11 Association; and

12 (F) other medical, child welfare, and legal
13 experts.

14 (5) REPORTS.—The Advisory Committee shall
15 submit, to the Secretary of Health and Human Serv-
16 ices, the Committee on Health, Education, Labor,
17 and Pensions of the Senate, the Committee on
18 Homeland Security and Governmental Affairs of the
19 Senate, the Committee on the Judiciary of the Sen-
20 ate, the Committee on Energy and Commerce of the
21 House of Representatives, the Committee on Over-
22 sight and Government Reform of the House of Rep-
23 resentatives, and the Committee on the Judiciary of
24 the House of Representatives—

1 (A) not later than 6 months after the es-
2 tablishment of the Advisory Committee, an in-
3 terim report outlining the Advisory Committee's
4 investigations and recommendations regarding
5 Office of Refugee Resettlement shelters for un-
6 accompanied alien children; and

7 (B) not later than 1 year after the estab-
8 lishment of the Advisory Committee, a final re-
9 port outlining the Advisory Committee's inves-
10 tigations and recommendations regarding Office
11 of Refugee Resettlement shelters for unaccom-
12 panied alien children.

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

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