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H. R. 2217

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 HOUSE OF REPRESENTATIVES

APRIL 10, 2019

Ms. WASSERMAN SCHULTZ (for herself, Ms. OMAR, Ms. NORTON, Ms. SCHAKOWSKY, Ms. JACKSON LEE, Mr. BLUMENAUER, Ms. OCASIO-CORTEZ, Ms. JAYAPAL, Ms. BARRAGÁN, Mr. AGUILAR, Mr. CARSON of Indiana, Ms. CLARKE of New York, Mr. COHEN, Ms. DELAURO, Mr. HASTINGS, Mr. NADLER, Mr. PRICE of North Carolina, Mr. DEUTCH, Mr. SERRANO, Mr. SMITH of Washington, Ms. WILSON of Florida, Ms. FRANKEL, Ms. BASS, Mr. RUIZ, Mr. DESAULNIER, Mrs. CAROLYN B. MALONEY of New York, Ms. LOFGREN, and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

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

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

22 (3) These civil immigration enforcement actions
23 have discouraged prospective sponsors of unaccom-
24 panied alien children, including family members,
25 from coming forward to resettle children in the com-

1 munity as they pursue lawful claims for humani-
2 tarian protection.

3 (4) Onerous requirements for sponsors and
4 raids carried out by U.S. Immigration and Customs
5 Enforcement of sponsor households have discouraged
6 qualified sponsors from coming forward, leading to
7 unprecedented numbers of unaccompanied alien chil-
8 dren (approximately 11,705 in March 2019) being
9 held in shelters overseen by the Office of Refugee
10 Resettlement as of the date of enactment of this Act.

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

1 (6) Temporary shelters are inappropriate loca-
2 tions to hold unaccompanied alien children because
3 such shelters—

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

6 (B) offer limited access to clinical and
7 legal services; and

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

12 (7) Facilities operated under a contract with
13 the Office of Refugee Resettlement have faced unac-
14 ceptable allegations of abuse and neglect of unac-
15 companied alien children that merit additional inves-
16 tigation and oversight.

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

20 (9) Services offered at facilities funded by the
21 Office of Refugee Resettlement are required to in-
22 clude classroom education, mental and medical
23 health services, case management, socialization and
24 recreation activities, and family reunification serv-
25 ices that facilitate the safe and timely release of un-

1 accompanied alien children to family members or
2 other sponsors that can care for them.

3 (10) Providing legal and case management serv-
4 ices to all children while they are housed in a facility
5 funded by the Office of Refugee Resettlement and
6 after their release from such a facility is a cost-effec-
7 tive and humane way of ensuring that the Office of
8 Refugee Resettlement meets its statutory obligation
9 to place children in least restrictive settings.

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

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

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

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

19 “(D) PROHIBITING USE OF CERTAIN IN-
20 FORMATION.—The Secretary of Homeland Se-
21 curity may not use information provided by an
22 unaccompanied alien child or information ini-
23 tially obtained by the Secretary of Health and
24 Human Services to make a suitability deter-
25 mination under subparagraph (A), a home

1 study determination under subparagraph (B),
2 or a secure facility determination under para-
3 graph (2)(A) for the purpose of apprehending,
4 detaining, or removing from the United
5 States—

6 “(i) the unaccompanied alien child;

7 “(ii) the proposed custodian or cur-
8 rent custodian;

9 “(iii) a resident of the home in which
10 the proposed custodian or current custo-
11 dian resides;

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

14 “(v) a resident of the home in which
15 the proposed sponsor or current sponsor
16 resides.”.

17 (b) RULES OF CONSTRUCTION.—

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

1 (2) CHILD WELFARE.—The amendments made
2 by subsection (a) may not be construed to prevent
3 the Secretary of Homeland Security from using in-
4 formation obtained by the Secretary of Health and
5 Human Services to investigate or report to the ap-
6 propriate law enforcement agency or child welfare
7 agency instances of trafficking, abuse, or neglect.

8 **SEC. 4. LIMITATION ON USE OF FUNDS FOR ENFORCE-**
9 **MENT, DETENTION, AND REMOVAL OPER-**
10 **ATIONS.**

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

16 **SEC. 5. TRANSFER OF U.S. IMMIGRATION AND CUSTOMS EN-**
17 **FORCEMENT FUNDING.**

18 Of the amount appropriated for fiscal year 2019 to
19 U.S. Immigration and Customs Enforcement for enforce-
20 ment and removal operations—

21 (1) \$30,000,000 shall be transferred to the Of-
22 fice of Inspector General of the Department of
23 Homeland Security to investigate child separation
24 and inspect detention facilities overseen by U.S. Im-
25 migration and Customs Enforcement;

1 (2) \$180,000,000 shall be transferred to the
2 Office of Refugee Resettlement to provide the post-
3 release legal, case management, and child advocate
4 services described in section 6; and

5 (3) \$10,000,000 shall be transferred to the Ad-
6 ministration for Children and Families to bolster the
7 efforts of the Task Force to Prevent and End
8 Human Trafficking.

9 **SEC. 6. ENSURING THE SAFETY OF UNACCOMPANIED**
10 **ALIEN CHILDREN.**

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

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

17 (2) allow children to successfully transition into
18 their communities by—

19 (A) assisting with school enrollment and
20 acculturation;

21 (B) locating medical and therapeutic serv-
22 ices;

23 (C) making referrals to area legal services;
24 and

1 (D) navigating new family settings and
2 other individual needs.

3 (b) REQUIRED SERVICES.—The Office of Refugee
4 Resettlement shall—

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

8 (2) facilitate efforts to connect every unaccom-
9 panied child, including each child with a sponsor,
10 with legal representation for his or her immigration
11 proceedings.

12 (c) THE OFFICE OF REFUGEE RESETTLEMENT AD-
13 VISORY COMMITTEE ON SHELTERS FOR UNACCOMPANIED
14 ALIEN CHILDREN.—

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

1 formed social work services, youth shelter manage-
2 ment, and immigration detention reform.

3 (2) COMPOSITION AND TERM.—

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

7 (B) PREREQUISITES.—

8 (i) IN GENERAL.—Each member of
9 the Advisory Committee shall be employed
10 by a nonprofit entity in the field of—

11 (I) education;

12 (II) immigration law;

13 (III) physical and mental health
14 of children and youth;

15 (IV) trauma-informed child wel-
16 fare social work services;

17 (V) youth shelter management;

18 (VI) cultural competency; or

19 (VII) immigration detention re-
20 form.

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

25 (3) INVESTIGATIVE AUTHORITY.—

1 (A) INSPECTIONS.—Members of the Advi-
2 sory Committee may conduct unannounced in-
3 spections of all shelters contracted with the Of-
4 fice of Refugee Resettlement to hold unaccom-
5 panied alien children.

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

13 (4) CONSULTATIONS.—The Advisory Committee
14 shall consult with, and receive recommendations
15 from—

16 (A) the American Medical Association;

17 (B) the American Academy of Pediatrics;

18 (C) the National Association of Social
19 Workers;

20 (D) the American Bar Association Center
21 on Children and the Law;

22 (E) the American Immigration Lawyers
23 Association; and

24 (F) other medical, child welfare, and legal
25 experts.

(5) REPORTS.—

(A) INTERIM REPORT.—Not later than 6 months after the establishment of the Advisory Committee under paragraph (1), the Advisory Committee shall release to the public an interim report outlining the Advisory Committee’s investigations and recommendations regarding Office of Refugee Resettlement shelters for unaccompanied alien children and submit such report to—

(i) the Secretary of Health and Human Services;

(ii) the Committee on Health, Education, Labor, and Pensions of the Senate;

(iii) the Committee on Homeland Security and Governmental Affairs of the Senate;

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

(v) the Committee on Energy and Commerce of the House of Representatives;

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

1 (vii) the Committee on the Judiciary
2 of the House of Representatives.

3 (B) FINAL REPORT.—Not later than 1
4 year after the establishment of the Advisory
5 Committee under paragraph (1), the Advisory
6 Committee shall release to the public, and sub-
7 mit to the recipients of the interim report under
8 subparagraph (A), a final report that outlines
9 the Advisory Committee’s investigations and
10 recommendations regarding Office of Refugee
11 Resettlement shelters for unaccompanied alien
12 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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