

116TH CONGRESS  
1ST SESSION

# S. 1733

To limit the separation of children from their parents or legal guardians, to limit the detention of families and children, to provide unaccompanied alien children with access to counsel, to increase the number of immigration judges and support staff, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Mrs. FEINSTEIN (for herself, Ms. HARRIS, Ms. HIRONO, and Ms. KLOBUCHAR) 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 children from their parents or legal guardians, to limit the detention of families and children, to provide unaccompanied alien children with access to counsel, to increase the number of immigration judges and support staff, and for other purposes.

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 “Protecting Families  
5       and Improving Immigration Procedures Act”.

1 **SEC. 2. ENSURING THAT FAMILIES REMAIN TOGETHER.**

2 (a) LIMITATION ON THE SEPARATION OF FAMI-  
3 LIES.—

4 (1) IN GENERAL.—An agent or officer of a des-  
5 ignated agency shall not remove a child from his or  
6 her parent or legal guardian at or near the port of  
7 entry or within 100 miles of the border of the  
8 United States unless 1 of the following situations  
9 has occurred:

10 (A) A State court, authorized under State  
11 law—

12 (i) terminates the rights of a parent  
13 or legal guardian;

14 (ii) determines that it is in the best  
15 interests of the child to be removed from  
16 his or her parent or legal guardian, in ac-  
17 cordance with the Adoption and Safe Fam-  
18 ilies Act of 1997 (Public Law 105–89); or

19 (iii) makes any similar determination  
20 that is legally authorized under State law.

21 (B) An official from the State or county  
22 child welfare agency with expertise in child  
23 trauma and development determines that it is  
24 in the best interests of the child to be removed  
25 from his or her parent or legal guardian be-  
26 cause the child—

1 (i) is in danger of abuse or neglect at  
2 the hands of the parent or legal guardian;  
3 or

4 (ii) is a danger to himself or herself or  
5 to others.

6 (C) The Chief Patrol Agent or the Area  
7 Port Director, in his or her official and  
8 undelegated capacity, authorizes separation,  
9 upon the recommendation by an agent or offi-  
10 cer, based on a finding that—

11 (i) the child is a victim of trafficking  
12 or is at significant risk of becoming a vic-  
13 tim of trafficking;

14 (ii) there is a strong likelihood that  
15 the adult is not the parent or legal guard-  
16 ian of the child; or

17 (iii) the child is in danger of abuse or  
18 neglect at the hands of the parent or legal  
19 guardian, or is a danger to himself or her-  
20 self or to others.

21 (2) PROHIBITION ON SEPARATION.—An agency  
22 may not remove a child from a parent or legal  
23 guardian solely for the policy goal of deterring indi-  
24 viduals from migrating to the United States or for

1 the policy goal of promoting compliance with civil  
2 immigration laws.

3 (3) DOCUMENTATION REQUIRED.—The Sec-  
4 retary shall ensure that a separation based upon a  
5 situation described in paragraph (1)(C)—

6 (A) is documented in writing; and

7 (B) includes the reason for such separation  
8 and the stated evidence for such separation.

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, childhood trauma, attachment, and child  
17 development, for use by the agents and officers, in  
18 order to standardize separations authorized under  
19 subsection (a)(1)(C).

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

23 (A) review the guidance developed under  
24 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 designated agencies, upon  
15 hire, and annually thereafter, shall com-  
16 plete training on adherence to the guidance  
17 under this subsection.

18 (ii) ANNUAL TRAINING.—All Chief  
19 Patrol Agents and Area Port Directors,  
20 upon hire, and annually thereafter, shall  
21 complete—

22 (I) training on adherence to the  
23 guidance under this subsection; 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 after the date of the enactment of this Act,  
18 the Secretary shall publish final public guidance that  
19 describes, with specificity, the manner in which a  
20 parent or legal guardian may locate a child who was  
21 separated from the parent or legal guardian under  
22 subsection (a)(1). In developing the public guidance,  
23 the Secretary shall consult with the Secretary of  
24 Health and Human Services, immigrant advocacy

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

3 (2) WRITTEN NOTIFICATION.—The Secretary  
4 shall provide each parent or legal guardian who was  
5 separated, with written notice of the public guidance  
6 to locate a separated child.

7 (3) LANGUAGE ACCESS.—All guidance shall be  
8 available in English and Spanish, and at the request  
9 of the parent or legal guardian, in the language or  
10 manner that is understandable by the parent or legal  
11 guardian.

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

16 (1) a status report on the monthly activities of  
17 the child;

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

22 (3) information about changes to the child's im-  
23 migration status; and

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

4           (f) ANNUAL REPORT ON FAMILY SEPARATION.—Not  
5           later than 1 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 describes  
8           each instance in which a child was separated from a par-  
9           ent or legal guardian and includes, for each such in-  
10          stance—

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

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

13           (3) the length of separation;

14           (4) whether the adult was charged with a crime,  
15           and if the adult was charged with a crime, the type  
16           of crime;

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

20           (6) whether the adult was prosecuted if charged  
21           with a crime and the associated outcome of such  
22           charges;

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



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

4           (9) whether the child was rendered an unac-  
 5           panied alien child; and

6           (10) other information in the Secretary's discre-  
 7           tion.

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

13           (1) the parental rights remain intact; and

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

17          (h) CLARIFICATION OF EXISTING LAW.—

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

23           (2) STATE LAW.—Nothing in this section may  
 24          be interpreted to supersede or modify State child  
 25          welfare laws, as applicable.

1 (i) GAO REPORT ON PROSECUTION OF ASYLUM  
2 SEEKERS.—

3 (1) STUDY.—The Comptroller General of the  
4 United States shall conduct a study of the prosecu-  
5 tion of asylum seekers during the period beginning  
6 on January 1, 2008 and ending on December 31,  
7 2018, including—

8 (A) the total number of persons who  
9 claimed a fear of persecution, received a favor-  
10 able credible fear determination, and were re-  
11 ferred for prosecution;

12 (B) an overview and analysis of the  
13 metrics used by the Department of Homeland  
14 Security and the Department of Justice to  
15 track the number of asylum seekers referred for  
16 prosecution;

17 (C) the total number of asylum seekers re-  
18 ferred for prosecution, a breakdown and de-  
19 scription of the criminal charges filed against  
20 asylum seekers during such period, and a  
21 breakdown and description of the convictions  
22 secured;

23 (D) the total number of asylum seekers  
24 who were separated from their children as a re-  
25 sult of being referred for prosecution;

1 (E) a breakdown of the resources spent on  
2 prosecuting asylum seekers during such period,  
3 as well as any diversion of resources required to  
4 prosecute asylum seekers, and any costs im-  
5 posed on States and localities;

6 (F) the total number of asylum seekers  
7 who were referred for prosecution and also went  
8 through immigration proceedings; and

9 (G) the total number of asylum seekers re-  
10 ferred for prosecution who were deported before  
11 going through immigration proceedings.

12 (2) REPORT.—Not later than 1 year after the  
13 date of the enactment of this Act, the Comptroller  
14 General shall submit a report to Congress that de-  
15 scribes the results of the study conducted under  
16 paragraph (1).

17 **SEC. 3. FLORES SETTLEMENT AGREEMENT.**

18 (a) IN GENERAL.—A family unit may be detained  
19 only in accordance with the holding made in *Flores v. Ses-*  
20 *sions et al.* (9th Cir. July 5, 2017; C.D. CA; July 24,  
21 2015) and the stipulated settlement agreement as filed in  
22 the United States District Court for the Central District  
23 of California on January 17, 1997 (CV 85 4544 RJK)  
24 (commonly known as the “Flores settlement agreement”).

1 (b) RULEMAKING.—Any regulation proposed or pro-  
2 mulgated to supersede the Flores settlement agreement is  
3 null and void.

4 (c) RULE OF CONSTRUCTION.—Nothing in this Act  
5 may be construed—

6 (1) to affect the application of the Flores settle-  
7 ment agreement to unaccompanied alien children; or

8 (2) to abrogate the Flores settlement agree-  
9 ment.

10 (d) REVIEW OF DETENTION DETERMINATIONS.—  
11 The review of any determination by the Secretary to de-  
12 tain an individual or family unit under this section shall  
13 be in accordance with all other provisions of law, holdings  
14 (including any holding made in *Flores v. Sessions et al.*  
15 (9th Cir. July 5, 2017; C.D. CA. July 24, 2015)), consent  
16 decrees, and settlement agreements (including the Flores  
17 settlement agreement).

18 **SEC. 4. ACCESS TO COUNSEL FOR UNACCOMPANIED ALIEN**  
19 **CHILDREN.**

20 (a) APPOINTMENT OF COUNSEL.—In any removal  
21 proceeding and in any appeal proceeding before the Attor-  
22 ney General from any such removal proceeding, an unac-  
23 companied alien child (as defined in section 462(g) of the  
24 Homeland Security Act on 2002 (6 U.S.C. 279(g))) shall

1 be represented by Government-appointed counsel, at Gov-  
2 ernment expense.

3 (b) LENGTH OF REPRESENTATION.—Once a child is  
4 designated as an unaccompanied alien child under sub-  
5 section (a)—

6 (1) the child shall be represented by counsel at  
7 every stage of the proceedings from the child's initial  
8 appearance through the termination of immigration  
9 proceedings; and

10 (2) any ancillary matters appropriate to such  
11 proceedings even if the child reaches 18 years of age  
12 or is reunified with a parent or legal guardian while  
13 the proceedings are pending.

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

18 (d) WITHIN DETENTION FACILITIES.—The Sec-  
19 retary shall ensure that unaccompanied alien children  
20 have access to counsel inside all detention, holding, and  
21 border facilities.

22 (e) PRO BONO REPRESENTATION.—

23 (1) IN GENERAL.—To the maximum extent  
24 practicable, the Attorney General should make every  
25 effort to utilize the services of competent counsel

1 who agree to provide representation to such children  
 2 under this section without charge.

3 (2) DEVELOPMENT OF NECESSARY INFRA-  
 4 STRUCTURES AND SYSTEMS.—The Attorney General  
 5 shall develop the necessary mechanisms—

6 (A) to identify counsel available to provide  
 7 pro bono legal assistance and representation to  
 8 children under this section; and

9 (B) to recruit such counsel.

10 (f) CONTRACTS; GRANTS.—

11 (1) IN GENERAL.—The Attorney General may  
 12 enter into contracts with, or award grants to, non-  
 13 profit agencies with relevant expertise in the delivery  
 14 of immigration-related legal services to children to  
 15 carry out the responsibilities under this section, in-  
 16 cluding providing legal orientation, screening cases  
 17 for referral, recruiting, training, and overseeing pro  
 18 bono attorneys.

19 (2) SUBCONTRACTS.—Nonprofit agencies may  
 20 enter into subcontracts with, or award grants to,  
 21 private voluntary agencies with relevant expertise in  
 22 the delivery of immigration related legal services to  
 23 children in order to carry out this section.

24 (g) MODEL GUIDELINES ON LEGAL REPRESENTA-  
 25 TION OF CHILDREN.—

1           (1) DEVELOPMENT OF GUIDELINES.—The Ex-  
2       ecutive Office for Immigration Review, in consulta-  
3       tion with voluntary agencies and national experts,  
4       shall develop model guidelines for the legal represen-  
5       tation of alien children in immigration proceedings,  
6       which shall be based on the children’s asylum guide-  
7       lines, the American Bar Association Model Rules of  
8       Professional Conduct, and other relevant domestic or  
9       international sources.

10          (2) PURPOSE OF GUIDELINES.—The guidelines  
11       developed under paragraph (1) shall be designed to  
12       help protect each child from any individual suspected  
13       of involvement in any criminal, harmful, or exploita-  
14       tive activity associated with the smuggling or traf-  
15       ficking of children, while ensuring the fairness of the  
16       removal proceeding in which the child is involved.

17       (h) DUTIES OF COUNSEL.—Counsel provided under  
18       this section shall—

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

23           (2) appear in person for all individual merits  
24       hearings before the Executive Office for Immigration

1 Review and interviews involving the Department of  
 2 Homeland Security;

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

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

9 **SEC. 5. INCREASES IN IMMIGRATION JUDGES AND SUP-**  
 10 **PORT STAFF.**

11 (a) IMMIGRATION JUDGES.—The Attorney General  
 12 shall increase the total number of immigration judges to  
 13 adjudicate pending cases and efficiently process future  
 14 cases by not fewer than 75 judges during fiscal year 2019.

15 (b) SUPPORT STAFF.—The Attorney General shall—

16 (1) increase the total number of judicial law  
 17 clerks by 75 during fiscal year 2019; and

18 (2) increase the total number of support staff  
 19 for immigration judges, including legal assistants  
 20 and interpreters, by 300 during fiscal year 2019.

21 **SEC. 6. DOCKET MANAGEMENT FOR RESOURCE CONSERVA-**  
 22 **TION.**

23 Notwithstanding any opposition from the Secretary,  
 24 immigration judges may administratively close cases, and  
 25 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 other immigration benefit; and

5 (2) has a pending application for such benefit  
6 before U.S. Citizenship and Immigration Services or  
7 another appropriate agency.

8 **SEC. 7. DEFINITIONS.**

9 In this Act:

10 (1) **AGENT; OFFICER.**—The terms “agent” and  
11 “officer” include contractors of the Federal Govern-  
12 ment.

13 (2) **CHILD.**—The term “child” means an indi-  
14 vidual who—

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

16 (B) has no permanent immigration status.

17 (3) **COMMITTEES OF JURISDICTION.**—The term  
18 “committees of jurisdiction” means—

19 (A) the Committee on the Judiciary of the  
20 Senate;

21 (B) the Committee on Health, Education,  
22 Labor, and Pensions of the Senate; and

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

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

6           (5) DESIGNATED AGENCY.—The term “des-  
7           ignated agency” means—

8                   (A) the Department of Homeland Security;

9                   (B) the Department of Justice; and

10                  (C) the Department of Health and Human  
11           Services.

12           (6) FINDING.—The term “finding” means an  
13           individualized written assessment or screening by the  
14           trained agent or officer that includes a consultation  
15           with a child welfare specialist, formalized as required  
16           under subsection (b)(3) and consistent with sub-  
17           sections (c), (d), and (h).

18           (7) SECRETARY.—The term “Secretary” means  
19           the Secretary of Homeland Security.

○