

matter of fact, the whole world is seeing a decline in manufacturing jobs because plants can produce more products with fewer people at less cost.

Since August of 2003, we have had 1.9 million new jobs created. But significantly, in the year 2004, we have had 97,000 new manufacturing jobs created.

That is good. That is something we ought to be pleased about. Let me note that the unemployment rate has fallen to 5.4 percent. It was 6.3 percent last June. It is now 5.4 percent, which is lower than the average unemployment rate for the 1970s, 1980s, or the 1990s.

The gross domestic product—the net production of goods and services in America—has grown for 11 straight quarters. So we have gotten out of this negative growth pattern left to President Bush by former President Clinton, and we have had 11 straight quarters of growth.

I think a factor in that was the President's leadership, for which I am very grateful. Some have said that job growth has failed to keep up with population growth. But that is not true. As the Joint Economic Committee, of which I am a member, reported: Since the unemployment rate peaked at 6.3 percent last June, total employment has increased by 2.2 million. The labor force has increased by 949,000.

That means there are 949,000 more workers. Unemployment has fallen by 1.2 million. Due to the large increase in employment and the large decrease in unemployment, unemployment has fallen significantly despite population growth.

I think Senator CORNYN is correct in saying that there exists in our country today a larger than normal number of people who are working out of their homes, working as independent contractors, as consultants, as truck drivers, and other things, who don't show up on a classic payroll. The statistics from the household survey that pick up that form of employment have been looking much better than the payroll survey for some time. The payroll survey is a valuable survey, but the household survey is valuable, too. The emphasis in complaining about President Bush's leadership does ignore, consistently, and without variation, the more positive numbers that show up in the household survey.

I think President Bush and this Congress have dealt with a very difficult problem—this economic slowdown. We did it in a way that is consistent with America's heritage and American values. As Americans, we are not a people who embrace a socialist, state-run economy. We are a vital, vibrant, innovative, creative people, and this allows our economy, because we have no governmental domination of it, to flourish and reach its highest possible ideals.

That is why the Europeans, in my view, are not doing as well. Germany and France have double-digit unemployment of 10, 11, 12 percent, because they have a state-run, state-dominated, regulated, bureaucratic govern-

ment with high taxes. It has made it difficult for them to be competitive in the world marketplace. Why would we ever want to emulate that? Why would we ever want to go to the socialist European ideal? Why would we not want to affirm the direction that President Bush is leading us?

I think Congress is working in order to follow the American ideal of freedom and independence, low taxes, and limited regulations.

HOME OWNERSHIP OPPORTUNITIES FOR NATIVE AMERICANS ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of S. 2571, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2571) to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2571) was read the third time and passed, as follows:

S. 2571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Homeownership Opportunities for Native Americans Act of 2004".

SEC. 2. FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES.

Section 601 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191) is amended by adding at the end the following:

"(d) LIMITATION ON PERCENTAGE.—A guarantee made under this title shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed."

HOME OWNERSHIP OPPORTUNITIES FOR NATIVE AMERICANS ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of H.R. 4471, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4471) to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4471) was read the third time, and passed.

UNACCOMPANIED ALIEN CHILD PROTECTION ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 541, S. 1129.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1129) to provide for the protection of unaccompanied alien children, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following: (Strike the part shown in black brackets and insert the part shown in italic.)

S. 1129

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Unaccompanied Alien Child Protection Act of 2003".

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

[Sec. 1. Short title; table of contents.

[Sec. 2. Definitions.

[TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

[Sec. 101. Procedures when encountering unaccompanied alien children.

[Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.

[Sec. 103. Appropriate conditions for detention of unaccompanied alien children.

[Sec. 104. Repatriated unaccompanied alien children.

[Sec. 105. Establishing the age of an unaccompanied alien child.

[Sec. 106. Effective date.

[TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

[Sec. 201. Guardians ad litem.

[Sec. 202. Counsel.

[Sec. 203. Effective date; applicability.

[TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

[Sec. 301. Special immigrant juvenile visa.

[Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.

[Sec. 303. Report.
[Sec. 304. Effective date.

[TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS]

[Sec. 401. Guidelines for children's asylum claims.

[Sec. 402. Unaccompanied refugee children.
[Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

[TITLE V—AUTHORIZATION OF APPROPRIATIONS]

[Sec. 501. Authorization of appropriations.

[TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002]

[Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.

[Sec. 602. Technical corrections.

[Sec. 603. Effective date.

[SEC. 2. DEFINITIONS.]

[(a) IN GENERAL.—In this Act:

[(1) COMPETENT.—The term “competent”, in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

[(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

[(B) is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting the attorney in the practice of law; and

[(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

[(2) DIRECTOR.—The term “Director” means the Director of the Office.

[(3) DIRECTORATE.—The term “Directorate” means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

[(4) OFFICE.—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

[(5) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

[(6) UNACCOMPANIED ALIEN CHILD.—The term “unaccompanied alien child” has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

[(7) VOLUNTARY AGENCY.—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

[(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

[(“(51) The term ‘unaccompanied alien child’ means a child who—

[(“(A) has no lawful immigration status in the United States;

[(“(B) has not attained the age of 18; and

[(“(C) with respect to whom—

[(“(i) there is no parent or legal guardian in the United States; or

[(“(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

[(“(52) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—

[(“(A) have not attained the age of 18; and

[(“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”.]

[TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION]

[SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.]

[(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

[(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

[(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

[(B) return such child to the child's country of nationality or country of last habitual residence.

[(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

[(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

[(i) such child is a national or habitual resident of a country described in subparagraph (A);

[(ii) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

[(iii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

[(iv) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

[(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

[(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

[(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

[(1) ESTABLISHMENT OF JURISDICTION.—

[(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

[(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

[(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

[(ii) has been convicted of any such felony.

[(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

[(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386), shall be considered to be in the custody of the Office.

[(2) NOTIFICATION.—

[(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

[(i) the apprehension of an unaccompanied alien child;

[(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

[(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

[(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

[(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

[(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

[(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after the apprehension of such child; or

[(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs.

[(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall promptly make arrangements to transfer the care and custody of such child to the Directorate.

[(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets the age requirements for treatment under this Act shall be made by the Director in accordance with section 105.

[SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.]

[(a) PLACEMENT AUTHORITY.—

[(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4) and section 103(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

[(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

[(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

[(C) An adult relative.

[(D) An entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

[(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

[(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

[(2) **SUITABILITY ASSESSMENT.**—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

[(3) **RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.**—

[(A) **PLACEMENT WITH PARENT OR LEGAL GUARDIAN.**—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

[(B) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to—

[(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

[(ii) limit any right or remedy under such international agreement.

[(4) **PROTECTION FROM SMUGGLERS AND TRAFFICKERS.**—

[(A) **POLICIES AND PROGRAMS.**—

[(i) **IN GENERAL.**—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

[(ii) **WITNESS PROTECTION PROGRAMS INCLUDED.**—The programs established pursuant to clause (i) may include witness protection programs.

[(B) **CRIMINAL INVESTIGATIONS AND PROSECUTIONS.**—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

[(C) **DISCIPLINARY ACTION.**—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition or cen-

sure, suspension, or disbarment of the attorney from the practice of law.

[(5) **GRANTS AND CONTRACTS.**—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

[(6) **REIMBURSEMENT OF STATE EXPENSES.**—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(b) **CONFIDENTIALITY.**—All information obtained by the Office relating to the immigration status of a person described in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

[SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

[(a) **STANDARDS FOR PLACEMENT.**—

[(1) **PROHIBITION OF DETENTION IN CERTAIN FACILITIES.**—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

[(2) **DETENTION IN APPROPRIATE FACILITIES.**—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

[(3) **STATE LICENSURE.**—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

[(4) **CONDITIONS OF DETENTION.**—

[(A) **IN GENERAL.**—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

[(i) educational services appropriate to the child;

[(ii) medical care;

[(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

[(iv) access to telephones;

[(v) access to legal services;

[(vi) access to interpreters;

[(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

[(viii) recreational programs and activities;

[(ix) spiritual and religious needs; and

[(x) dietary needs.

[(B) **NOTIFICATION OF CHILDREN.**—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

[(b) **PROHIBITION OF CERTAIN PRACTICES.**—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

[(1) shackling, handcuffing, or other restraints on children;

[(2) solitary confinement; or

[(3) pat or strip searches.

[(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under *Flores v. Reno*.

[SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

[(a) **COUNTRY CONDITIONS.**—

[(1) **SENSE OF CONGRESS.**—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

[(2) **ASSESSMENT OF CONDITIONS.**—

[(A) **IN GENERAL.**—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

[(B) **FACTORS FOR ASSESSMENT.**—The Office shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

[(b) **REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.**—

[(1) **IN GENERAL.**—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

[(2) **CONTENTS.**—The report submitted under paragraph (1) shall include, at a minimum, the following information:

[(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

[(B) A description of the type of immigration relief sought and denied to such children.

[(C) A statement of the nationalities, ages, and gender of such children.

[(D) A description of the procedures used to effect the removal of such children from the United States.

[(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

[(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

[SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

[(a) **IN GENERAL.**—The Director shall develop procedures to determine the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge.

[(b) **PROHIBITION ON SOLE MEANS OF DETERMINING AGE.**—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

[SEC. 106. EFFECTIVE DATE.

[This title shall take effect 90 days after the date of enactment of this Act.

[TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL]

[SEC. 201. GUARDIANS AD LITEM.]

[(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

[(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

[(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

[(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

[(i) is a child welfare professional or other individual who has received training in child welfare matters; and

[(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

[(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

[(3) DUTIES.—The guardian ad litem shall—

[(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

[(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

[(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

[(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

[(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

[(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

[(G) report factual findings relating to—

[(i) information gathered pursuant to subparagraph (B);

[(ii) the care and placement of the child during the pendency of the proceedings or matters; and

[(iii) any other information gathered pursuant to subparagraph (D).

[(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

[(A) those duties are completed;

[(B) the child departs the United States;

[(C) the child is granted permanent resident status in the United States;

[(D) the child attains the age of 18; or

[(E) the child is placed in the custody of a parent or legal guardian; whichever occurs first.

[(5) POWERS.—The guardian ad litem—

[(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

[(B) shall be permitted to review all records and information relating to such pro-

ceedings that are not deemed privileged or classified;

[(C) may seek independent evaluations of the child;

[(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

[(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

[(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

[(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

[(1) circumstances and conditions that unaccompanied alien children face; and

[(2) various immigration benefits for which such alien child might be eligible.

[(c) PILOT PROGRAM.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

[(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

[(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

[(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

[(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

[(3) SCOPE OF PROGRAM.—

[(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

[(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

[(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

[SEC. 202. COUNSEL.]

[(a) ACCESS TO COUNSEL.—

[(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

[(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge.

[(3) GOVERNMENT-FUNDED LEGAL REPRESENTATION AS A LAST RESORT.—

[(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, if no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel

for such child at the expense of the Government.

[(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) shall not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

[(C) AVAILABILITY OF FUNDING.—In carrying out this paragraph, the Director may make use of funds derived from any source designated by the Secretary of Health and Human Services from discretionary funds available to the Department of Health and Human Services.

[(D) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

[(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

[(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

[(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection. National nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

[(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall ensure that no such agency receiving funds under this subsection is a grantee or contractee for more than 1 of the following services:

[(i) Services provided under section 102.

[(ii) Services provided under section 201.

[(iii) Services provided under paragraph (2).

[(iv) Services provided under paragraph (3).

[(6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

[(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

[(B) PURPOSE OF GUIDELINES.—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

[(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

[(b) DUTIES.—Counsel shall—

[(1) represent the unaccompanied alien child in all proceedings and matters relating

to the immigration status of the child or other actions involving the Directorate;

[(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

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

[(c) ACCESS TO CHILD.—

[(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

[(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

[(d) TERMINATION OF APPOINTMENT.—Counsel appointed under subsection (a)(3) shall carry out the duties described in subsection (b) until—

[(1) those duties are completed;

[(2) the child departs the United States;

[(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3));

[(4) the child is granted protection under the Convention Against Torture;

[(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158);

[(6) the child is granted permanent resident status in the United States; or

[(7) the child attains 18 years of age; whichever occurs first.

[(e) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

[(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

[(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

[(f) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

[SEC. 203. EFFECTIVE DATE; APPLICABILITY.]

[(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

[(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

[TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN]

[SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.]

[(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

[(1) “(J) an immigrant under the age of 21 on the date of application who is present in the United States—

[(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a

juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

[(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

[(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.”

[(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)) is amended—

[(1) by amending subparagraph (A) to read as follows:

[(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply;”

[(2) in subparagraph (B), by striking the period and inserting “; and”; and

[(3) by adding at the end the following:

[(C) the Secretary of Homeland Security may waive subparagraphs (A) and (B) of paragraph (2) of section 212(a) in the case of an offense which arose as a consequence of the child being unaccompanied.”

[(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

[SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.]

[(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

[(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at

United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

[SEC. 303. REPORT.]

[(Not later than January 31, 2004, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

[(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

[(2) data regarding the care and placement of children in accordance with this Act;

[(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

[(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

[SEC. 304. EFFECTIVE DATE.]

[(The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.)

[TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS]

[SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.]

[(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its “Guidelines for Children's Asylum Claims”, dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the “Guidelines for Children's Asylum Claims” in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

[(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the “Guidelines for Children's Asylum Claims” to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

[SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.]

[(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

[(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

[(2) by inserting after paragraph (2) the following:

[(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

[(A) the number of unaccompanied refugee children, by region;

[(B) the capacity of the Department of State to identify such refugees;

[(C) the capacity of the international community to care for and protect such refugees;

[(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

[(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

“(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.”.

[(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

[(1) striking “and” after “countries,”; and
 [(2) inserting before the period at the end the following: “, and instruction on the needs of unaccompanied refugee children”.

[SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.]

[(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

[(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

[(“(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied child as defined in section 101(a)(51).”.

[TITLE V—AUTHORIZATION OF APPROPRIATIONS]

[SEC. 501. AUTHORIZATION OF APPROPRIATIONS.]

[(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out—

[(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

[(2) this Act.

[(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

[TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002]

[SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.]

[(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

[(1) in subparagraph (K), by striking “and” at the end;

[(2) in subparagraph (L), by striking the period at the end and inserting “, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and”; and

[(3) by adding at the end the following:

[(“(M) ensuring minimum standards of care for all unaccompanied alien children—

[(“(i) for whom detention is necessary; and
 [(“(ii) who reside in settings that are alternative to detention.”.

[(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

[(“(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

[(“(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2003; and

[(“(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2003, including the power to—

[(“(i) declare providers to be in breach and seek damages for noncompliance;

[(“(ii) terminate the contracts of providers that are not in compliance with such conditions; and

[(“(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.”.

[(c) CLARIFICATION OF DIRECTOR'S AUTHORITY TO HIRE PERSONNEL.—Section 462(f)(3) of the Homeland Security Act of 2002 (6 U.S.C. 279(f)(3)) is amended—

[(1) by striking “(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel” and inserting the following:

[(“(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—

[(“(A) IN GENERAL.—Except as provided in subparagraph (B), the personnel”; and

[(2) by inserting at the end the following:

[(“(B) EXCEPTION.—The Director may hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. Notwithstanding the provisions of subparagraph (A), the Director may elect not to receive the transfer of any personnel of the Department of Justice employed in connection with the functions transferred by this section or, at the Director's discretion, to assign different duties to such personnel.”.

[SEC. 602. TECHNICAL CORRECTIONS.]

[(Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

[(1) in paragraph (3), by striking “paragraph (1)(G)” and inserting “paragraph (1)”; and

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

[(“(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.”.

[SEC. 603. EFFECTIVE DATE.]

[(The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Unaccompanied Alien Child Protection Act of 2004”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.

Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.

Sec. 103. Appropriate conditions for detention of unaccompanied alien children.

Sec. 104. Repatriated unaccompanied alien children.

Sec. 105. Establishing the age of an unaccompanied alien child.

Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem.

Sec. 202. Counsel.

Sec. 203. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa.

Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.

Sec. 303. Report.

Sec. 304. Effective date.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims.

Sec. 402. Unaccompanied refugee children.

Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.

Sec. 602. Technical corrections.

Sec. 603. Effective date.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term “competent”, in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(B) is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting the attorney in the practice of law; and

(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term “Director” means the Director of the Office.

(3) DIRECTORATE.—The term “Directorate” means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term “unaccompanied alien child” has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(51) The term ‘unaccompanied alien child’ means a child who—

“(A) has no lawful immigration status in the United States;

“(B) has not attained the age of 18; and

“(C) with respect to whom—

“(i) there is no parent or legal guardian in the United States; or

“(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

“(52) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—

“(A) have not attained the age of 18; and

“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco

parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in subparagraph (A);

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subpara-

graph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual described in subparagraph (A) or (B) of section 102(a)(1), upon a determination that such individual is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made by the Director in accordance with section 105.

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)) and under paragraph (4) of this subsection and section 103(a)(2) of this Act, an unaccompanied alien child in the custody of the

Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition

or censure, suspension, or disbarment of the attorney from the practice of law.

(5) **GRANTS AND CONTRACTS.**—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

(6) **REIMBURSEMENT OF STATE EXPENSES.**—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(b) **CONFIDENTIALITY.**—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) **REQUIRED DISCLOSURE.**—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) **PENALTY.**—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) **STANDARDS FOR PLACEMENT.**—

(1) **PROHIBITION OF DETENTION IN CERTAIN FACILITIES.**—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) **DETENTION IN APPROPRIATE FACILITIES.**—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) **STATE LICENSURE.**—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) **CONDITIONS OF DETENTION.**—

(A) **IN GENERAL.**—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

- (i) educational services appropriate to the child;
- (ii) medical care;
- (iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;
- (iv) access to telephones;
- (v) access to legal services;
- (vi) access to interpreters;
- (vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;
- (viii) recreational programs and activities;
- (ix) spiritual and religious needs; and
- (x) dietary needs.

(B) **NOTIFICATION OF CHILDREN.**—Regulations promulgated in accordance with subparagraph

(A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

(b) **PROHIBITION OF CERTAIN PRACTICES.**—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

- (1) shackling, handcuffing, or other restraints on children;
- (2) solitary confinement; or
- (3) pat or strip searches.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under *Flores v. Reno*.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) **COUNTRY CONDITIONS.**—

(1) **SENSE OF CONGRESS.**—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) **ASSESSMENT OF CONDITIONS.**—

(A) **IN GENERAL.**—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) **FACTORS FOR ASSESSMENT.**—The Office shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) **REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.**—

(1) **IN GENERAL.**—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

(2) **CONTENTS.**—The report submitted under paragraph (1) shall include, at a minimum, the following information:

(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(B) A description of the type of immigration relief sought and denied to such children.

(C) A statement of the nationalities, ages, and gender of such children.

(D) A description of the procedures used to effect the removal of such children from the United States.

(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) **IN GENERAL.**—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to

ensure a prompt determination of the age of such alien.

(b) **PROHIBITION ON SOLE MEANS OF DETERMINING AGE.**—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

SEC. 201. GUARDIANS AD LITEM.

(a) **ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.**—

(1) **APPOINTMENT.**—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) **QUALIFICATIONS OF GUARDIAN AD LITEM.**—

(A) **IN GENERAL.**—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) **PROHIBITION.**—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) **DUTIES.**—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

(G) report factual findings relating to—

(i) information gathered pursuant to subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information gathered pursuant to subparagraph (D).

(4) **TERMINATION OF APPOINTMENT.**—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian;

whichever occurs first.

(5) **POWERS.**—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

(b) **TRAINING.**—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

(1) circumstances and conditions that unaccompanied alien children face; and

(2) various immigration benefits for which such alien child might be eligible.

(c) **PILOT PROGRAM.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

(2) **PURPOSE.**—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) **SCOPE OF PROGRAM.**—

(A) **SELECTION OF SITE.**—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

(B) **NUMBER OF CHILDREN.**—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) **REPORT TO CONGRESS.**—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

SEC. 202. COUNSEL.

(a) **ACCESS TO COUNSEL.**—

(1) **IN GENERAL.**—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) **PRO BONO REPRESENTATION.**—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge. To the maximum extent practicable, the Director shall ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) **DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.**—In ensuring that legal

representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) **CONTRACTING AND GRANT MAKING AUTHORITY.**—

(A) **IN GENERAL.**—The Director shall enter into contracts with or make grants to nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including but not limited to such activities as providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys. Nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) **CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.**—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall take into consideration whether the agencies in question are capable of properly administering the services covered by such grants or contracts without an undue conflict of interest.

(5) **MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.**—

(A) **DEVELOPMENT OF GUIDELINES.**—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) **PURPOSE OF GUIDELINES.**—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) **IMPLEMENTATION.**—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

(b) **DUTIES.**—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

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

(c) **ACCESS TO CHILD.**—

(1) **IN GENERAL.**—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) **RESTRICTION ON TRANSFERS.**—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) **NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.**—

(1) **IN GENERAL.**—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) **OPPORTUNITY TO CONSULT WITH COUNSEL.**—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) **ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.**—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) **EFFECTIVE DATE.**—This title shall take effect 180 days after the date of enactment of this Act.

(b) **APPLICABILITY.**—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.

(a) **J VISA.**—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

“(J) an immigrant under the age of 21 on the date of application who is present in the United States—

“(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

“(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

“(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;”.

(b) **ADJUSTMENT OF STATUS.**—Section 245(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

“(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply;”;

(2) in subparagraph (B), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(C) the Secretary of Homeland Security may waive section 212(a)(2)(D) in the case of an offense which arose as a consequence of the child being unaccompanied.”.

(c) **ELIGIBILITY FOR ASSISTANCE.**—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) **TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.**—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) **TRAINING OF DIRECTORATE PERSONNEL.**—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

SEC. 303. REPORT.

Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

- (1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);
- (2) data regarding the care and placement of children in accordance with this Act;
- (3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and
- (4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

SEC. 304. EFFECTIVE DATE.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) **SENSE OF CONGRESS.**—Congress commends the Immigration and Naturalization Service for its issuance of its "Guidelines for Children's Asylum Claims", dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the "Guidelines for Children's Asylum Claims" in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) **TRAINING.**—The Secretary shall provide periodic comprehensive training under the "Guidelines for Children's Asylum Claims" to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) **IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.**—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

- (1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and
- (2) by inserting after paragraph (2) the following:

"(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

- "(A) the number of unaccompanied refugee children, by region;
- "(B) the capacity of the Department of State to identify such refugees;
- "(C) the capacity of the international community to care for and protect such refugees;
- "(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

"(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

"(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible."

(b) **TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.**—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

- (1) striking "and" after "countries,"; and
- (2) inserting before the period at the end the following: ", and instruction on the needs of unaccompanied refugee children".

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) **PLACEMENT IN REMOVAL PROCEEDINGS.**—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) **EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.**—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

"(E) **APPLICABILITY.**—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51)."

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

- (1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and
- (2) this Act.

(b) **AVAILABILITY OF FUNDS.**—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) **ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.**—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking "and" at the end;

(2) in subparagraph (L), by striking the period at the end and inserting "including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and"; and

(3) by adding at the end the following:

"(M) ensuring minimum standards of care for all unaccompanied alien children—

- "(i) for whom detention is necessary; and
- "(ii) who reside in settings that are alternative to detention."

(b) **ADDITIONAL POWERS OF THE DIRECTOR.**—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

"(4) **POWERS.**—In carrying out the duties under paragraph (3), the Director shall have the power to—

"(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2004; and

"(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2004, including the power to—

- "(i) declare providers to be in breach and seek damages for noncompliance;
- "(ii) terminate the contracts of providers that are not in compliance with such conditions; and
- "(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section."

SEC. 602. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

- (1) in paragraph (3), by striking "paragraph (1)(G)" and inserting "paragraph (1)"; and
- (2) by adding at the end the following:

"(5) **STATUTORY CONSTRUCTION.**—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor."

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

Mr. SESSIONS. Madam President, I ask unanimous consent that the Feinstein substitute amendment at the desk be agreed to, the committee-reported substitute amendment, as amended, be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4058) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1129), as amended, was read the third time, and passed.

CONTROLLED SUBSTANCE ACT AMENDMENT

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2976, which was introduced earlier today by Senators HATCH and LEVIN.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2976) to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments.