

The HELP Separated Children Act of 2018

Senator Tina Smith

There are more than 5 million children in the United States living with at least one unauthorized immigrant parent; the vast majority of those children are U.S. citizens. These children are vulnerable when their parents are the subjects of immigration enforcement, detention, and removal actions. Past periods of increased enforcement saw children abandoned at home or at school after their parents' detention, without information about their parents' location or adequate arrangements for their care. In one instance in 2006, after Immigrations and Customs Enforcement carried out an enforcement action in Worthington, Minnesota, one second-grader came home from school to find his two-year-old brother alone and his parents gone. For the next week, he cared for his brother while his grandmother drove to meet them. Recent high profile enforcement actions in Tennessee and Iowa, as well as increased apprehensions of parents during check-ins with ICE and the shift away from the use of discretion for parents, are once again increasing the number of children who are experiencing the collateral effects of a parent's apprehension, detention, and removal.

When parents facing detention are not given the opportunity to make arrangements for the care of their children, this not only results in serious, avoidable trauma to children and families, but also unnecessary expenses for the state. Children of detained parents have been needlessly taken into the custody of state or local child welfare agencies. In the most extreme cases, because of their parents' inability to participate in family court hearings, these children have been adopted or placed into foster care with well-meaning American families. Even when the outcome is not termination of parental rights, enforcement can lead to de facto permanent separation of children from their parents and cause tremendous harm to children's physical, mental, and economic well-being.

The **Humane Enforcement and Legal Protections (HELP) for Separated Children Act** would protect children affected by immigration enforcement actions or proceedings against their parents. Specifically, the bill:

- (1) **allows parents to make calls to arrange for the care of their children and ensures that children can call and visit their parents while they are detained;**
- (2) **allows parents to participate in family court proceedings affecting their children;**
- (3) **protects children from being compelled to serve as translators for their parents in immigration enforcement actions;**
- (4) **ensures that parents can coordinate their departures with their children; and**
- (5) **requires ICE to consider the best interests of children in detention, release, and transfer decisions affecting their parents.**

In 2013, during the Senate Judiciary Committee's markup of the comprehensive immigration reform bill, the previous version of the HELP Separated Children Act was the only amendment—out of nearly 200 amendments—to pass by a unanimous roll call vote. The bipartisan amendment was cosponsored by Senators Franken, Grassley, Coons, Cornyn, Hirono, Cruz, Feinstein, Leahy, and Blumenthal.

For more information, contact Erin Kurvers at 4-1040 or Erin_Kurvers@smith.senate.gov.

The HELP Separated Children Act of 2018

Section-by-Section Summary

Section 1 provides the title of the bill, the Humane Enforcement and Legal Protections for Separated Children Act, or the “HELP” Separated Children Act.

Section 2 defines key terms used throughout the bill. Notably, the bill extends protections to children whose parents are arrested or detained for immigration violations by federal officials *or* state officials acting under agreement with DHS.

Section 3 contains a series of measures designed to protect children in the course of immigration enforcement actions involving their parents. The overwhelming majority of the children of undocumented parents are United States citizens. A 2011 study found that of the 5.5 million children of undocumented immigrants in the country in 2010, 4.5 million, or 82 percent, were born in the United States. (Source: [Pew Hispanic Center](#).)

Calls to arrange for the care of children. It is very traumatic for children to have their parents go missing and to lack any idea of what has happened to them. Too often, parents are detained and are denied any ability to contact their immediate family to arrange for the care of their children. After the 2008 raids in Postville, Iowa, the *Allamakee County Standard* reported that in some instances, children went up to 72 hours without knowing what had happened to their parents. In 2011, a report found that this was still a problem, and that “ICE and arresting police officers too often refuse to allow parents to make arrangements for their children.” (Source: [Applied Research Center](#).) In April 2018, an immigration action at a meat processing plant in Bean Station, Tennessee, left 160 children, all U.S. citizens, without the care of one or both of their parents. (Source: [The New Yorker](#).)

In August 2017, ICE released a directive on the [Detention and Removal of Alien Parents or Legal Guardians](#) that directs ICE personnel to facilitate, when practicable, an apprehended parent’s ability to make phone calls to arrange for care for their children. Allowing an apprehended parent to make phone calls to arrange for their children’s care is critical to reduce the likelihood that children will be left in unsafe or unstable care arrangements or will lose contact with their parent and other relatives. Section (3)(a)(1) would require ICE or arresting officers to ask if an individual is a parent or legal guardian of a child in the U.S., and to allow any such individuals the ability to make at least two telephone calls to arrange for the care of their children. (It does not require that these calls be “free.”) This section also requires the arresting officers to provide the individual with contact information for child welfare agencies, family courts, and pro bono legal service providers. ICE offices and detention facilities are already required to maintain this kind of information. (Source: [August 29, 2017 ICE Directive](#); [2011 Operations Manual ICE Performance-Based National Detention Standards](#).)

Notification of child welfare agencies in cases where parents can’t make arrangements. Mirroring the August 2017 ICE directive, Section (a)(2) directs ICE and arresting officers to notify a child welfare agency in the event that the parent cannot make an arrangement.

Protecting children from being forced to translate interrogations. Children should not be forced to translate for their parents’ interviews by ICE or other personnel. Subsection (a)(3) directs ICE and arresting officers to not engage in this conduct.

Opportunity for parents to say goodbye to their children prior to separation. Parents should be allowed an opportunity to speak with and embrace their children before being separated from them. Subsection (a)(4) directs ICE to allow parents to communicate with their children prior to separation in order to reassure their children and to share information with the children about their care arrangements while the parent is detained.

Consideration of the best interests of children in detention, transfer and release decisions. In too many cases, the parents of U.S. citizen children are detained hundreds of miles away from their site of arrest and transferred between facilities without any notification to their children. This makes it extremely difficult for children to maintain contact or visit their parents and for parents to make more permanent arrangements for what will happen to children if they are removed.

Section (3)(a)(5) builds on these standards and sets up three simple rules: detain parents in the detention facility closest to the site of arrest; don't transfer them to a different facility unless they've made care arrangements for their children—or have been told what those care arrangements will be; and consider the best interests of their children in decisions relating to a parent's detention, release, or transfer.

Section 4 creates a series of protections for children once their parents are in detention at an ICE facility or a facility under contract with ICE to detain unlawful immigrants.

Permit children to have regular phone calls and contact visits with their detained parents. Right now, ICE guidelines stipulate that immediate family, including children, “shall be permitted to visit” a detainee unless they pose a threat to the security and good order of the facility, and that the facilities “should try to facilitate contact visitation when possible.” Additionally, the guidelines require facilities to provide detainees “reasonable and equitable” access to phones during waking hours; where these calls are made for “personal or family emergencies” or for a “compelling need,” the facilities should allow these calls to be direct (i.e. not collect) or free. (Source: 2011 Operations Manual ICE Performance-Based National Detention Standards at [5.6.V.D. and E.](#) and [5.7.V.I.2.](#)) Subsection (2)(A) codifies the requirement that children be allowed to have regular phone calls and contact visits with their detained parents.

Permit parents the ability to fully participate in child welfare proceedings concerning their children. In 2011, the Applied Research Center released a report comprehensively detailing the different ways in which detained parents are unable to participate in child welfare proceedings and comply with family court orders—helping transfer more immigrant children into foster and adoptive care. (Source: [Applied Research Center.](#)) Current ICE guidelines clearly state that detainees “shall have access to courts and counsel” and stipulate that detainees should be afforded “direct or free” calls to federal and state courts where the detainee is involved in a legal proceeding. The guidelines further provide that staff may not monitor phone calls made in reference to legal matters, absent a court order. Finally, they also state that “[w]ithin the constraints of safety and security, selected detainees shall be able to...attend family-related state court proceedings, while under constant staff supervision.” (Source: 2011 Operations Manual ICE Performance-Based National Detention Standards at [5.2.II.1](#), [5.6.V.E. and F.](#), and [6.3.II.6.](#)). Subsections (a)(2)(B)-(E) require detention facilities to allow detainees to (1) fully participate in child welfare and family court proceedings, via free calls if necessary; and (2) to comply with family court or child welfare agency orders.

Permit parents to get the documents necessary to depart the country with—or in coordination with—their children. The Bureau of Immigration Appeals has held that when the parent of a U.S.

citizen minor is deported, it is up to the parent to decide whether or not to bring his child with her to her home country. Unfortunately, many parents are removed from the country with no idea of what will happen to their children. Currently, ICE guidelines state that detention facilities “shall provide assistance in a timely manner to any unrepresented detainee who requests a notary public.” (Source: 2011 Operations Manual ICE Performance-Based National Detention Standards at [6.3.V.M.](#)) Subsection (a)(2)(F)-Subsection (3) builds on this protection to make sure that detainees can make adequate arrangements to travel with or in coordination with their children.

Section 5 requires the Secretary of DHS to organize training for sections 3 and 4.

Section 6 requires the Secretary of DHS to issue regulations for sections 3 and 4.

Section 7 clarifies that the provisions of this bill are severable.