

119TH CONGRESS
1ST SESSION

S. _____

To protect children affected by immigration enforcement actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. SMITH introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To protect children affected by immigration enforcement actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Humane Enforcement
5 and Legal Protections for Separated Children Act” or “
6 HELP Separated Children Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) APPREHENSION.—The term “apprehension”
2 means the detention or arrest by officials of the De-
3 partment or cooperating entities.

4 (2) CHILD.—The term “child” means an indi-
5 vidual who is younger than 18 years of age.

6 (3) CHILD WELFARE AGENCY.—The term
7 “child welfare agency” means a State or local agen-
8 cy responsible for child welfare services under sub-
9 titles B and E of title IV of the Social Security Act
10 (42 U.S.C. 601 et seq.).

11 (4) COOPERATING ENTITY.—The term “cooper-
12 ating entity” means a Federal, State or local entity
13 acting under an agreement with the Secretary relat-
14 ing to immigration detention and apprehension.

15 (5) DEPARTMENT.—The term “Department”
16 means the Department of Homeland Security.

17 (6) DETENTION FACILITY.—

18 (A) IN GENERAL.—The term “detention
19 facility” means a Federal, State, or local gov-
20 ernment facility, or a privately owned and oper-
21 ated facility, that is used, in whole or in part,
22 to hold individuals under the authority of the
23 Director of U.S. Immigration and Customs En-
24 forcement, including facilities that hold such in-

1 dividuals under a contract or agreement with
2 the Director.

3 (B) INCLUSIONS.—The term “detention fa-
4 cility” includes—

5 (i) any short-term hold facility oper-
6 ated by U.S. Immigration and Customs
7 Enforcement or U.S. Customs and Border
8 Protection that is used to hold individuals
9 for internal immigration enforcement pur-
10 poses; and

11 (ii) any space where an individual or
12 family unit is held in custody by the De-
13 partment.

14 (7) IMMIGRATION ENFORCEMENT ACTION.—The
15 term “immigration enforcement action” means the
16 apprehension of 1 or more individuals who the Sec-
17 retary has reason to believe are removable under sec-
18 tion 237 of the Immigration and Nationality Act (8
19 U.S.C. 1227).

20 (8) PARENT.—The term “parent” means—

21 (A) a biological or adoptive parent of a
22 child, or an adult otherwise recognized by the
23 law of a foreign country as a parent, whose pa-
24 rental rights have not been relinquished or ter-

1 minated under State law or the law of a foreign
2 country;

3 (B) a legal guardian of a child under State
4 law or the law of a foreign country; and

5 (C) a kin caregiver who has historically
6 cared for a child when a parent is not present.

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

9 **SEC. 3. IDENTIFICATION OF PARENTS DETAINED DURING**
10 **IMMIGRATION ENFORCEMENT ACTIONS.**

11 The Secretary and any cooperating entity shall—

12 (1) as soon as practicable but generally not
13 later than 2 hours after an immigration enforcement
14 action occurs, inquire whether a detained or arrested
15 individual is a parent of a child in the United
16 States, and document such information; and

17 (2) generally inquire about any changes to the
18 parental status of the individual while the individual
19 is in the custody of the Secretary or the cooperating
20 entity—

21 (A) at every official interaction with per-
22 sonnel of a detention facility; and

23 (B) not less than 10 days before the date
24 on which the individual is removed from the
25 United States.

1 **SEC. 4. APPREHENSION PROCEDURES FOR IMMIGRATION**
2 **ENFORCEMENT ACTIONS.**

3 (a) IN GENERAL.—In any immigration enforcement
4 action, the Secretary and any cooperating entity shall—

5 (1) provide each apprehended individual who is
6 a parent of a child in the United States—

7 (A) the opportunity to make as many tele-
8 phone calls as necessary to arrange for the care
9 of such child in the absence of the individual;
10 and

11 (B) with contact information, in the pre-
12 ferred language of the individual, for—

13 (i) attorneys and legal service pro-
14 viders capable of providing free legal advice
15 or representation regarding child welfare,
16 child custody determinations, and immigra-
17 tion matters;

18 (ii) the consulate of the applicable for-
19 eign country; and

20 (iii) child welfare agencies and family
21 courts in the jurisdiction in which any such
22 child is located;

23 (2) notify the child welfare agency with jurisdic-
24 tion over any such child only if—

25 (A) the apprehended parent wants the
26 child to remain in the United States and is un-

1 able to make care arrangements for the child;
2 or

3 (B) the Department has information spe-
4 cific to any such child that the child is at immi-
5 nent risk of serious harm, and any such infor-
6 mation shall be documented and shared with
7 the apprehended parent;

8 (3) except in a case of medical necessity or in
9 extraordinary circumstances, ensure that personnel
10 of the Department and the cooperating entity do
11 not—

12 (A) in the presence of any child, make ex-
13 cessive use of force, including drawing weapons
14 and throwing individuals to the ground, in the
15 arrest or apprehension of individuals;

16 (B) compel or request any child to inter-
17 pret or translate in the interview of a parent or
18 of any other individual encountered during the
19 immigration enforcement action; or

20 (C) engage in any deception of a child for
21 purposes of facilitating or initiating immigrant
22 enforcement against the child's parents, other
23 family or household members, or any other indi-
24 vidual;

1 (4) in the case of an apprehended parent whose
2 child is present during the immigration enforcement
3 action, except in extraordinary circumstances, ensure
4 that the parent is provided an opportunity—

5 (A) to communicate with the child, includ-
6 ing through physical contact;

7 (B) to reassure the child; and

8 (C) to share information regarding care ar-
9 rangements for the child with any other indi-
10 vidual who is present or who may be reached by
11 telephone while the apprehended parent is de-
12 tained; and

13 (5) ensure that any apprehended individual who
14 is a parent of a child in the United States—

15 (A) except in a case of medical necessity or
16 in extraordinary circumstances—

17 (i) is not transferred from the location
18 at which the individual is apprehended
19 until the individual—

20 (I) has made arrangements for
21 the care of such child; or

22 (II) if such arrangements are un-
23 available or the individual is unable to
24 make such arrangements within 48

1 hours of the immigration enforcement
2 action—

3 (aa) is consulted and al-
4 lowed to participate in the deci-
5 sion-making process to arrange
6 with the Department for the care
7 arrangements made for the child;
8 and

9 (bb) is provided with a
10 means to maintain communica-
11 tion with the child; and

12 (ii) to the extent practicable, is placed
13 in a detention facility that will facilitate
14 opportunities for regular visitation with a
15 child during detention and is proximate
16 to—

17 (I) the habitual place of residence
18 of the child; and

19 (II) the location of the immigra-
20 tion enforcement action; and

21 (B) receives due consideration of the best
22 interests of the child in any decision or action
23 relating to the individual's detention, release, or
24 transfer between detention facilities.

1 (b) REQUESTS TO STATE AND LOCAL ENTITIES.—

2 If the Secretary makes a request to a cooperating entity
3 to hold in custody an individual who the Secretary has
4 reason to believe is removable under section 237 of the
5 Immigration and Nationality Act (8 U.S.C. 1227) pending
6 transfer of such individual to the custody of the Secretary
7 or to a detention facility, the Secretary shall ensure that
8 the cooperating entity provides the individual the protec-
9 tions described in paragraphs (1) and (2) of subsection
10 (a) if such individual is the parent of a child in the United
11 States.

12 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
13 SERVED.—Nothing in this section may be construed to im-
14 pede, delay, or limit the obligations of the Secretary, the
15 Attorney General, or the Secretary of Health and Human
16 Services under—

17 (1) section 235 of the William Wilberforce
18 Trafficking Victims Protection Reauthorization Act
19 of 2008 (8 U.S.C. 1232);

20 (2) section 462 of the Homeland Security Act
21 of 2002 (6 U.S.C. 279); or

22 (3) the Stipulated Settlement Agreement filed
23 in the United States District Court for the Central
24 District of California on January 17, 1997 (CV 85–

1 4544–RJK) (commonly known as the “Flores Settle-
2 ment Agreement”).

3 **SEC. 5. ACCESS TO CHILDREN, STATE AND LOCAL COURTS,**
4 **CHILD WELFARE AGENCIES, AND CONSULAR**
5 **OFFICIALS.**

6 (a) IN GENERAL.—At each detention facility, the
7 Secretary shall—

8 (1) prominently post, in a manner accessible to
9 detainees and visitors, and include in detainee hand-
10 books—

11 (A) information regarding the protections
12 under this Act; and

13 (B) information regarding potential eligi-
14 bility for parole or release;

15 (2) except in extraordinary circumstances, en-
16 sure that each individual detained by the Depart-
17 ment who is a parent of a child in the United
18 States—

19 (A) has the opportunity to make free, reg-
20 ular phone and video calls and contact visits
21 with such child, ideally in a community or child-
22 friendly setting;

23 (B) is provided with contact information
24 for child welfare agencies and family courts in
25 the relevant jurisdictions;

1 (C) has the opportunity to participate fully
2 and, to the extent practicable, in person—

3 (i) in all family court proceedings;

4 (ii) in any other proceeding that may
5 impact the right of the individual to cus-
6 tody of such child; and

7 (iii) in case planning activities;

8 (D) has the opportunity to make free and
9 confidential telephone calls to legal counsel, rel-
10 evant child welfare agencies, and family courts
11 as often as necessary to ensure that the best in-
12 terests of such child, including a preference for
13 family unity whenever appropriate, may be con-
14 sidered in child welfare agency or family court
15 proceedings;

16 (E) is provided—

17 (i) the opportunity to fully comply
18 with all family court or child welfare agen-
19 cy orders impacting the custody of such
20 child;

21 (ii) access to United States passport
22 applications or other relevant travel docu-
23 ment applications for the purpose of ob-
24 taining travel documents for such child;

1 (iii) timely access to a notary public
2 for purposes of applying for a passport for
3 such child or executing guardianship or
4 other agreements to ensure the safety of
5 such child; and

6 (iv) adequate time and opportunity
7 before removal to obtain passports,
8 apostilled birth certificates, travel docu-
9 ments, medical records, educational
10 records, and other necessary records on be-
11 half of such child if such child will accom-
12 pany the individual to the country of origin
13 of the individual or eventually join the in-
14 dividual in such country; and

15 (3) if doing so would not impact public safety
16 or national security, facilitate the ability of each de-
17 tained parent to share information regarding travel
18 arrangements with his or her counsel, consulate,
19 children, child welfare agencies, or other caregivers
20 before the parent departs the United States.

21 (b) DESIGNATION OF POINTS OF CONTACT.—For
22 each detention facility and field office of U.S. Immigration
23 and Customs Enforcement, the Secretary shall designate
24 a point of contact who shall be responsible for ensuring
25 that each detained parent of a child who is in the United

1 States is provided all opportunities necessary to comply
2 with child welfare case plans and participate in family
3 court proceedings.

4 (c) APPOINTMENT OF NATIONAL COORDINATOR.—
5 The Secretary shall appoint a national coordinator who
6 shall—

7 (1) serve as the primary point of contact and
8 subject-matter expert for all U.S. Immigration and
9 Customs Enforcement personnel regarding State
10 child welfare and guardianship issues for parents
11 subject to immigration enforcement actions;

12 (2) conduct data collection and analysis with re-
13 spect to the parental status of individuals who are
14 in the custody of the Secretary;

15 (3) on an ongoing basis, share relevant infor-
16 mation based on such data with points of contact
17 designated under subsection (b);

18 (4) provide child welfare stakeholders and such
19 points of contact with guidance and training on—

20 (A) facilitating the ability of detained par-
21 ents to participate in family court proceedings
22 relating to their children;

23 (B) visitation protocols; and

1 (C) coordinating contact between parents
2 and counsel, consulates, child welfare personnel,
3 family members, and caregivers; and

4 (5) facilitate reunification with parents prior to
5 removal and after removal if requested by the par-
6 ent, including by—

7 (A) establishing procedures;

8 (B) assisting with travel documents;

9 (C) coordinating with Federal, State, and
10 local child welfare agencies, caretakers, foreign
11 governments, and other appropriate stake-
12 holders; and

13 (D) arranging travel.

14 **SEC. 6. PROSECUTORIAL DISCRETION.**

15 The Secretary shall prioritize the exercise of discre-
16 tion in any instance in which the parent of a child is sub-
17 ject to an immigration enforcement action by considering
18 the best interests of the child in decisions, including—

19 (1) whether to prosecute the individual for 1 or
20 more immigration violations;

21 (2) whether to transfer the individual to an-
22 other detention facility that is farther away from the
23 place of habitual residence of the child;

24 (3) whether to release the individual so the in-
25 dividual may continue to care for the child; and

1 (4) whether to consider alternatives to the de-
2 tention or release of the individual.

3 **SEC. 7. FACILITATION OF RETURN TO THE UNITED STATES.**

4 The Secretary may facilitate on a case-by-case basis
5 reentry of a parent to the United States who was pre-
6 viously removed through a grant of parole if the individual
7 is able to demonstrate—

8 (1) that the individual has a termination of pa-
9 rental rights hearing or other family court hearing
10 pending or ongoing in the United States for the pur-
11 poses of attending the hearing;

12 (2) that the child of the individual is experi-
13 encing a humanitarian need, such as a medical
14 emergency; or

15 (3) that the child of the individual is deceased
16 for purposes of attending the funeral of the child in
17 the United States.

18 **SEC. 8. MANDATORY TRAINING.**

19 (a) IN GENERAL.—The Secretary, in consultation
20 with the Secretary of Health and Human Services and
21 independent child welfare and family law experts, shall de-
22 velop and provide training on the protections required
23 under sections 4 and 5, (including on methods to minimize
24 trauma to children and to detect signs of abuse or neglect)

1 to all employees of the Department, cooperating entities,
2 and detention facilities who—

3 (1) hold positions related to parental interests;

4 (2) regularly engage in immigration enforce-
5 ment actions, including the detention of individuals;

6 and

7 (3) in the course of such actions, come into con-
8 tact with parents of children who are in the United
9 States.

10 (b) PROVISION OF TRAINING.—The training under
11 subsection (a) shall be provided—

12 (1) in the case of current employees of the De-
13 partment, cooperating entities, and detention facili-
14 ties, not later than 180 days after the date of the
15 enactment of this Act, and annually thereafter; and

16 (2) in the case of any employee of the Depart-
17 ment, a cooperating entity, or a detention facility
18 who is hired after the date that is 180 days after
19 the date of the enactment of this Act, on the date
20 on which the employee commences duty, and annu-
21 ally thereafter.

22 **SEC. 9. DATA COLLECTION.**

23 (a) IN GENERAL.—On the date that is 180 days after
24 the date of the enactment of this Act, and every 180 days
25 thereafter, the Secretary, in consultation and collaboration

1 with the Secretary of Health and Human Services, shall
2 collect and maintain the following information:

3 (1) Of individuals in the custody of U.S. Immi-
4 gration and Customs Enforcement—

5 (A) the number and percentage who are
6 parents of a child who is in the United States;
7 and

8 (B) the number and percentage who are
9 parents of a child involved in the child welfare
10 system in the United States.

11 (2) For the preceding 180-day period—

12 (A) the number of parents of a child in the
13 United States who have been apprehended by
14 U.S. Immigration and Customs Enforcement
15 and released; and

16 (B) of the number of individuals released
17 by U.S. Immigration and Customs Enforcement
18 during such period, the percentage who are
19 such parents.

20 (3) The number of individuals in the custody of
21 U.S. Immigration and Customs Enforcement who
22 are parents of a child involved in the child welfare
23 system in the United States, and the percentage of
24 such individuals among all individuals detained by

1 U.S. Immigration and Customs Enforcement who
2 are parents.

3 (4) The number of individuals who are parents
4 of a child involved in the child welfare system in the
5 United States who have been released from the cus-
6 tody of U.S. Immigration and Customs Enforce-
7 ment, and the percentage of such individuals among
8 all individuals who are parents and have been re-
9 leased from the custody of U.S. Immigration and
10 Customs Enforcement.

11 (5) The number of parents subject to a final
12 order of removal who have elected to take their child
13 with them to the country of removal, and the per-
14 centage of such parents among all parents with chil-
15 dren who are subject to removal orders.

16 (6) The number of parents subject to a final
17 order of removal who have elected to leave their
18 child in the United States, and the percentage of
19 such parents among all parents with children who
20 are subject to removal orders.

21 (7) The number of personnel who have received
22 training on the parental rights of individuals in the
23 custody of U.S. Immigration and Customs Enforce-
24 ment, the titles of such personnel, and the percent-

1 age of such personnel among all field staff of U.S.
2 Immigration and Customs Enforcement.

3 (8) The average number of visits a detained
4 parent receives from his or her child during a 180-
5 day period.

6 (9) The average and median distance between a
7 detention facility housing detainee parents and the
8 domicile of the children of such parents.

9 (10) The number of transfers, if any, to dif-
10 ferent detention facilities a parent experienced , in-
11 cluding the distance of to facility from the site of the
12 enforcement action.

13 (b) REPORT.—

14 (1) IN GENERAL.—Not later than 180 days
15 after the date of the enactment of this Act, and
16 every 180 days thereafter, the Secretary shall sub-
17 mit a report that contains the information collected
18 under subsection (a) for the preceding 180-day pe-
19 riod to—

20 (A) the Committee on the Judiciary, the
21 Committee on Homeland Security and Govern-
22 mental Affairs, and the Committee on Health,
23 Education, Labor, and Pensions of the Senate;
24 and

1 (B) the Committee on the Judiciary, the
2 Committee on Homeland Security, and the the
3 Committee on Education and Workforce of the
4 House of Representatives.

5 (2) INITIAL REPORT.—The initial report sub-
6 mitted under paragraph (1) shall include a detailed
7 summary of the initial efforts of the Secretary to
8 fulfill the obligations under this Act, including a de-
9 scription of the manner in which the Secretary plans
10 to establish or integrate data collection and storage
11 protocols related to this Act.

12 (3) SUBSEQUENT REPORTS.—Each subsequent
13 report submitted under paragraph (1) shall in-
14 clude—

15 (A) the number employees of the Depart-
16 ment, coordinating entities, and detention facili-
17 ties provided annual training under section 7;
18 and

19 (B) the number of new employees of the
20 Department, coordinating entities, and deten-
21 tion facilities who have been provided an initial
22 training under that section.

23 (c) PUBLIC AVAILABILITY.—The Secretary shall
24 make the report required by subsection (b) available to
25 the public on a website of the Department.

1 (d) METHODS.—In carrying out this section, the Sec-
2 retary shall ensure that—

3 (1) the methods for collecting information are
4 consistent from year to year so as to enable the
5 tracking of trends across years; and

6 (2) personally identifiable information is pro-
7 tected.

8 **SEC. 10. RULEMAKING.**

9 Not later than 180 days after the date of the enact-
10 ment of this Act, the Secretary shall promulgate regula-
11 tions to implement this Act.

12 **SEC. 11. SEVERABILITY.**

13 If any provision of this Act, any amendment made
14 by this Act, or the application of any such provision or
15 amendment to any person or circumstance is held to be
16 unconstitutional, the remaining provisions of this Act, the
17 remaining amendments made by this Act, and the applica-
18 tion of such provisions and amendments to any person or
19 circumstance shall not be affected by such holding.