

115TH CONGRESS
2D SESSION

S. 3036

To limit the separation of families at or near ports of entry.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2018

Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Ms. HARRIS, Mr. LEAHY, Mrs. MURRAY, Mr. WYDEN, Mr. DURBIN, Mr. REED, Mr. NELSON, Mr. CARPER, Mr. MENENDEZ, Mr. SANDERS, Mr. CASEY, Ms. KLOBUCHAR, Mrs. SHAHEEN, Mr. WARNER, Mr. MERKLEY, Mr. BENNET, Mr. BLUMENTHAL, Mr. SCHATZ, Mr. MURPHY, Ms. HIRONO, Mr. KING, Mr. KAINE, Ms. WARREN, Mr. MARKEY, Mr. BOOKER, Ms. CORTEZ MASTO, Ms. BALDWIN, Mr. HEINRICH, Mr. UDALL, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To limit the separation of families at or near ports of entry.

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 “Keep Families To-
5 gether Act”.

6 **SEC. 2. LIMITATION ON THE SEPARATION OF FAMILIES.**

7 (a) IN GENERAL.—An agent or officer of a des-
8 ignated agency shall be prohibited from removing a child

1 from his or her parent or legal guardian, at or near the
2 port of entry or within 100 miles of the border of the
3 United States, unless one of the following has occurred:

4 (1) A State court, authorized under State law,
5 terminates the rights of a parent or legal guardian,
6 determines that it is in the best interests of the child
7 to be removed from his or her parent or legal guard-
8 ian, in accordance with the Adoption and Safe Fam-
9 ilies Act of 1997 (Public Law 105–89), or makes
10 any similar determination that is legally authorized
11 under State law.

12 (2) An official from the State or county child
13 welfare agency with expertise in child trauma and
14 development makes a best interests determination
15 that it is in the best interests of the child to be re-
16 moved from his or her parent or legal guardian be-
17 cause the child is in danger of abuse or neglect at
18 the hands of the parent or legal guardian, or is a
19 danger to herself or others.

20 (3) The Chief Patrol Agent or the Area Port
21 Director in their official and undelegated capacity,
22 authorizes separation upon the recommendation by
23 an agent or officer, based on a finding that—

1 (A) the child is a victim of trafficking or
2 is at significant risk of becoming a victim of
3 trafficking;

4 (B) there is a strong likelihood that the
5 adult is not the parent or legal guardian of the
6 child; or

7 (C) the child is in danger of abuse or ne-
8 glect at the hands of the parent or legal guard-
9 ian, or is a danger to themselves or others.

10 (b) PROHIBITION ON SEPARATION.—An agency may
11 not remove a child from a parent or legal guardian solely
12 for the policy goal of deterring individuals from migrating
13 to the United States or for the policy goal of promoting
14 compliance with civil immigration laws.

15 (c) DOCUMENTATION REQUIRED.—The Secretary
16 shall ensure that a separation under subsection (a)(3) is
17 documented in writing and includes, at a minimum, the
18 reason for such separation, together with the stated evi-
19 dence for such separation.

20 **SEC. 3. RECOMMENDATIONS FOR SEPARATION BY AGENTS**
21 **OR OFFICERS.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of the enactment of this Act, the Secretary, in con-
24 sultation with the Secretary of Health and Human Serv-
25 ices, shall develop training and guidance, with an empha-

1 sis on the best interests of the child, childhood trauma,
2 attachment, and child development, for use by the agents
3 and officers, in order to standardize the implementation
4 of section 2(a)(3).

5 (b) ANNUAL REVIEW.—Not less frequently than an-
6 nually, the Secretary of Health and Human Services shall
7 review the guidance developed under subsection (a) and
8 make recommendations to the Secretary to ensure such
9 guidance is in accordance with current evidence and best
10 practices in child welfare, child development, and child-
11 hood trauma.

12 (c) REQUIREMENT.—The guidance under subsection
13 (a) shall incorporate the presumptions described in section
14 4.

15 (d) ADDITIONAL REQUIREMENTS.—

16 (1) EVIDENCE-BASED.—The guidance and
17 training developed under this section shall incor-
18 porate evidence-based practices.

19 (2) TRAINING REQUIRED.—

20 (A) All agents and officers of designated
21 agencies, upon hire, and annually thereafter,
22 shall complete training on adherence to the
23 guidance under this section.

(B) All Chief Patrol Agents and Area Port Directors, upon hire, and annually thereafter, shall complete—

(i) training on adherence to the guidance under this section; and

(ii) 90 minutes of child welfare practice training that is evidence-based and trauma-informed.

SEC. 4. PRESUMPTIONS.

The presumptions described in this section are the following:

(1) FAMILY UNITY.—There shall be a strong presumption in favor of family unity.

(2) SIBLINGS.—To the maximum extent practicable, the Secretary shall ensure that sibling groups remain intact.

(3) DETENTION.—In general, there is a presumption that detention is not in the best interests of families and children.

SEC. 5. REQUIRED POLICY FOR LOCATING SEPARATED CHILDREN.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall publish final public guidance that describes, with specificity, the manner in which a parent or legal guardian

1 may locate a child who was separated from the parent or
 2 legal guardian under section 2(a). In developing the public
 3 guidance, the Secretary shall consult with the Secretary
 4 of Health and Human Services, immigrant advocacy orga-
 5 nizations, child welfare organizations, and State child wel-
 6 fare agencies.

7 (b) WRITTEN NOTIFICATION.—The Secretary shall
 8 provide each parent or legal guardian who was separated,
 9 with written notice of the public guidance to locate a sepa-
 10 rated child.

11 (c) LANGUAGE ACCESS.—All guidance shall be avail-
 12 able in English and Spanish, and at the request of the
 13 parent or legal guardian, in the language or manner that
 14 is understandable by the parent or legal guardian.

15 **SEC. 6. REQUIRED INFORMATION FOR SEPARATED FAMI-**
 16 **LIES.**

17 Not less frequently than once every month, the Sec-
 18 retary shall provide the parent or legal guardian of a child
 19 who was separated, the following information, at a min-
 20 imum:

21 (1) A status report on the monthly activities of
 22 the child.

23 (2) Information about the education and health
 24 of the child, including any medical treatment pro-

1 vided to the child or medical treatment rec-
2 ommended for the child.

3 (3) Information about changes to the child's
4 immigration status.

5 (4) Other information about the child, designed
6 to promote and maintain family reunification, as the
7 Secretary determines in his or her discretion.

8 **SEC. 7. ANNUAL REPORT ON FAMILY SEPARATION.**

9 Not later than 1 year after the date of the enactment
10 of this Act, and annually thereafter, the Secretary shall
11 submit a report to the committees of jurisdiction that de-
12 scribes each instance in which a child was separated from
13 a parent or legal guardian and includes, for each such in-
14 stance, the following:

15 (1) The relationship of the adult and the child.

16 (2) The age and gender of the adult and child.

17 (3) The length of separation.

18 (4) Whether the adult was charged with a
19 crime, and if the adult was charged with a crime,
20 the type of crime.

21 (5) Whether the adult made a claim for asylum,
22 expressed a fear to return, or applied for other im-
23 migration relief.

1 (6) Whether the adult was prosecuted if
2 charged with a crime and the associated outcome of
3 such charges.

4 (7) The stated reason for, and evidence in sup-
5 port of, the separation.

6 (8) If the child was part of a sibling group at
7 the time of separation, whether the sibling group has
8 had physical contact and visitation.

9 (9) Whether the child was rendered an unac-
10 companied alien child.

11 (10) Other information in the Secretary's dis-
12 cretion.

13 **SEC. 8. CLARIFICATION OF PARENTAL RIGHTS.**

14 If a child is separated from a parent or legal guard-
15 ian, and a State court has not made a determination that
16 the parental rights have been terminated, there is a pre-
17 sumption that—

18 (1) the parental rights remain intact; and

19 (2) the separation does not constitute an af-
20 firmative determination of abuse or neglect under
21 Federal or State law.

22 **SEC. 9. CLARIFICATION OF EXISTING LAW.**

23 (a) FEDERAL LAW.—Nothing in this Act shall be in-
24 terpreted to supersede or modify Federal child welfare law,

1 where applicable, including the Adoption and Safe Fami-
2 lies Act of 1997 (Public Law 105–89).

3 (b) STATE LAW.—Nothing in this Act shall be inter-
4 preted to supersede or modify State child welfare laws
5 where applicable.

6 **SEC. 10. GAO REPORT ON PROSECUTION OF ASYLUM SEEK-**
7 **ERS.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall conduct a study of the prosecution of asylum
10 seekers during the period beginning on January 1, 2008
11 and ending on December 31, 2018, including—

12 (1) the total number of persons who claimed a
13 fear of persecution, received a favorable credible fear
14 determination, and were referred for prosecution;

15 (2) an overview and analysis of the metrics
16 used by the Department of Homeland Security and
17 the Department of Justice to track the number of
18 asylum seekers referred for prosecution;

19 (3) the total number of asylum seekers referred
20 for prosecution, a breakdown and description of the
21 criminal charges filed against asylum seekers during
22 such period, and a breakdown and description of the
23 convictions secured;

1 (4) the total number of asylum seekers who
2 were separated from their children as a result of
3 being referred for prosecution;

4 (5) a breakdown of the resources spent on pros-
5 ecuting asylum seekers during such period, as well
6 as any diversion of resources required to prosecute
7 asylum seekers, and any costs imposed on States
8 and localities;

9 (6) the total number of asylum seekers who
10 were referred for prosecution and also went through
11 immigration proceedings; and

12 (7) the total number of asylum seekers referred
13 for prosecution who were deported before going
14 through immigration proceedings.

15 (b) REPORT.—Not later than 1 year after the date
16 of the enactment of this Act, the Comptroller General shall
17 submit to Congress a report that describes the results of
18 the study conducted pursuant to subsection (a).

19 **SEC. 11. DEFINITIONS.**

20 In this Act:

21 (1) AGENT; OFFICER.—The terms “agent” and
22 “officer” include contractors of the Federal Govern-
23 ment.

24 (2) CHILD.—The term “child” means an indi-
25 vidual who—

1 (A) has not reached the age of 18; and

2 (B) has no permanent immigration status.

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

5 (A) the Committee on the Judiciary and
6 the Committee on Health, Education, Labor,
7 and Pensions of the Senate; and

8 (B) the Committee on the Judiciary of the
9 House of Representatives.

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

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

17 (A) the Department of Homeland Security;

18 (B) the Department of Justice; and

19 (C) the Department of Health and Human
20 Services.

21 (6) FINDING.—The term “finding” means an
22 individualized written assessment or screening by the
23 trained agent or officer that includes a consultation
24 with a child welfare specialist, formalized as required

1 under section 2(c) and consistent with sections 3, 4,
2 and 8.

3 (7) SECRETARY.—Unless otherwise specified,
4 the term “Secretary” means the Secretary of Home-
5 land Security.

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