

115TH CONGRESS
2D SESSION

S. 3227

To reunite families separated at or near ports of entry.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2018

Ms. HARRIS (for herself, Mr. MERKLEY, Ms. CORTEZ MASTO, Ms. WARREN, Mr. BLUMENTHAL, Mr. MARKEY, Mr. CARPER, Mr. SANDERS, Mrs. GILLIBRAND, Mr. KAINE, Mr. BOOKER, Mr. MENENDEZ, Mr. WYDEN, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reunite families separated 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 TITLES.**

4 This Act may be cited as the “Reunite Every Unac-
5 panied Newborn Infant, Toddler and other children
6 Expeditiously Act” or the “REUNITE Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) AGENCIES.—The term “agencies” means
2 the Department of Homeland Security and the De-
3 partment of Health and Human Services.

4 (2) APPREHENDED PARENT OR LEGAL GUARD-
5 IAN.—The term “apprehended parent or legal
6 guardian” means an alien who—

7 (A) is 18 years of age or older;

8 (B) is the parent or legal guardian of an
9 alien child; and

10 (C) was apprehended by the Department
11 of Homeland Security, the Department of Jus-
12 tice, or any other entity authorized to enforce
13 section 275 of the Immigration and Nationality
14 Act (8 U.S.C. 1325).

15 (3) BORDER.—The term “border” means an
16 international border of the United States.

17 (4) CHILD.—The term “child” means an alien
18 who—

19 (A) has not reached 18 years of age; and

20 (B) has no permanent immigration status
21 in the United States.

22 (5) DHS.—The term “DHS” means the De-
23 partment of Homeland Security.

24 (6) HHS.—The term “HHS” means the De-
25 partment of Health and Human Services.

1 **SEC. 3. REUNIFICATION OF SEPARATED FAMILIES.**

2 (a) RULEMAKING.—

3 (1) GUIDANCE.—Not later than 10 days after
4 the date of the enactment of this Act, the Secretary
5 of Homeland Security and the Secretary of Health
6 and Human Services, after immediate consultation
7 with humanitarian organizations, child welfare orga-
8 nizations, State child welfare agencies, and States
9 contiguous with the border with Mexico, shall pro-
10 mulgate and publish guidance through a direct final
11 rule that specifically describes the coordinated ef-
12 forts that the agencies will undertake to aid an ap-
13 prehended parent or legal guardian in locating and
14 reuniting with any children separated from them at
15 or near the port of entry, or within 100 miles of the
16 border, pursuant to applicable law.

17 (2) DEVELOPMENT; SERVICES; PUBLICATION.—
18 The guidance promulgated pursuant to paragraph
19 (1)—

20 (A) shall be developed to protect the best
21 interests of affected children;

22 (B) shall describe all pro bono or govern-
23 ment-funded services, including immigration
24 services, available for apprehended parents and
25 legal guardians or affected children; and

1 (C) shall be made publicly available in
2 writing and on the websites of the agencies.

3 (b) COVERAGE OF JOINT GUIDANCE.—The guidance
4 published pursuant to subsection (a) shall outline the
5 agencies' coordinated efforts, including efforts—

6 (1) to develop and conduct family tracing proce-
7 dures, in cooperation with nongovernmental experts
8 in child welfare best practices;

9 (2) to maintain a functional, accessible, fre-
10 quent, and no cost means for apprehended parents
11 and legal guardians to contact their children through
12 a telephone hotline or visual conferencing—

13 (A) to obtain daily-updated information
14 about the location of their children and all
15 scheduled immigration proceedings for their
16 children; and

17 (B) to set up opportunities to speak with
18 their child not fewer than 3 times per week, in-
19 cluding at least once by video;

20 (3) to facilitate substantial daily access of non-
21 governmental case workers, child advocates, and
22 legal counsel to children separated from their par-
23 ents and legal guardians to represent these chil-
24 dren's best interests in custody decisions and immi-
25 gration proceedings;

1 (4) to provide for humanitarian organizations
2 and State and local child welfare agencies in the ju-
3 risdictions in which the children are located to con-
4 duct unannounced, independent weekly inspections
5 of all DHS and HHS facilities at which children
6 who are separated from their apprehended parents
7 or legal guardians are in custody;

8 (5) to coordinate with the Department of State
9 and embassies and consulates of foreign govern-
10 ments to locate apprehended parents and legal
11 guardians of children who have departed from the
12 United States;

13 (6) to provide clear notice to apprehended par-
14 ents and legal guardians of their legal rights, includ-
15 ing—

16 (A) their parental and guardianship rights
17 with respect to their children who have been
18 designated as unaccompanied alien children;
19 and

20 (B) their right to designate another par-
21 ent, legal guardian, or other qualified adult cus-
22 todian to sponsor and care for such children;

23 (7) to facilitate information sharing by parents
24 and legal guardians about any arrangements to de-
25 part the United States with their consulate, their

1 children, their children's case worker, legal counsel,
2 child advocate, and other adult custodians in ad-
3 vance of their departure;

4 (8) to provide parents and legal guardians with
5 order of deportation or removal access to nongovern-
6 mental organizations providing assistance with locat-
7 ing and reunifying their children;

8 (9) to provide cost-free transportation of chil-
9 dren separated from their parents or legal guardians
10 to reunite with them or another parent, legal guard-
11 ian, or other qualified adult custodian to which the
12 children consent;

13 (10) to establish a recordkeeping system that
14 will maintain information to aid the reunification of
15 every child separated from an apprehended parent or
16 legal guardian;

17 (11) to provide free telephone calls between ap-
18 prehended parents and their children; and

19 (12) to otherwise assist with the reunification
20 of separated families.

21 (c) WRITTEN NOTIFICATION.—Shortly after the
22 guidance is published pursuant to subsection (a), the Sec-
23 retary of Homeland Security, the Secretary of Health and
24 Human Services, and the Attorney General shall provide
25 each apprehended parent or legal guardian who has been

1 separated from his or her children written notice, in
2 English, Spanish, or another language understandable by
3 the parent or legal guardian, upon request, of any guid-
4 ance that may assist them in their efforts to locate and
5 reunify with their children.

6 (d) REUNIFICATION REQUIRED.—The agencies shall
7 ensure immediate reunification of children that remain
8 separated from their apprehended parent or guardian.

9 (e) OTHER REQUIREMENTS.—The agencies shall—

10 (1) issue a privacy impact assessment related to
11 the use of DNA testing under the section; and

12 (2) establish a process for redressing violations
13 of the requirements under this section.

14 (f) EXEMPTIONS.—The agencies may not reunite an
15 apprehended parent or legal guardian with a separated
16 child under this section if—

17 (1) the child has been determined to be a victim
18 of trafficking, or is at significant risk of becoming
19 a victim of trafficking, by that apprehended parent
20 or guardian, as determined by a Chief Border Patrol
21 Agent or Customs and Border Protection Area Port
22 Director in their official and undelegated capacity;

23 (2) the child appears to be in danger of abuse
24 or neglect at the hands of the apprehended parent
25 or legal guardian;

1 (3) the child is a danger to himself, herself, or
2 others, as determined by a State court or an official
3 from a State or county child welfare agency in his
4 or her official and undelegated capacity; or

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

8 **SEC. 4. DNA TESTING.**

9 (a) **USE OF OTHER TECHNIQUES.**—Before utilizing
10 DNA testing to determine family relationships, agencies
11 shall use other techniques commonly utilized by United
12 States courts for determining family relationships, includ-
13 ing official documents, representations from a witness,
14 parent, relative, or child, and observations of interactions
15 between the adult and the child.

16 (b) **DNA TESTING.**—

17 (1) **IN GENERAL.**—DNA testing may not be re-
18 quired as a condition of reunification if alternative
19 means of demonstrating a familial relationship have
20 been established. If reasonable suspicions remain
21 about a familial relationship after exhausting the
22 techniques referred to in subsection (a), DNA test-
23 ing may be used.

24 (2) **PROTOCOLS.**—The agencies shall develop
25 protocols for establishing a familial relationship if an

1 individual does not want to consent to DNA testing
2 or may not have a biological relationship with a
3 child.

4 (3) TYPE OF TEST.—Whenever DNA testing is
5 used, the agencies shall use the least privacy-invasive
6 type of DNA test available to confirm the claimed
7 relationship and may not charge the child or apprehended parent or guardian for the costs of conducting such testing.

10 (4) CONSENT.—The agencies shall—

11 (A) obtain the consent of any individual
12 older than 18 years of age before conducting a
13 DNA test;

14 (B) make every effort to obtain the consent of a guardian before conducting a DNA
15 test on anyone younger than 18 years of age;
16 and
17

18 (C) destroy DNA samples as soon as possible and not later than 7 days after completing
19 the required DNA matching tests to minimize
20 any potential misuse of genetic information collected under this subsection.

23 (c) PROTECTION OF INFORMATION.—

24 (1) IN GENERAL.—If DNA testing is used for
25 the purposes of reunification, the agencies shall en-

1 sure the protection of privacy, genetic data, and per-
2 sonal information of children, parents, all individuals
3 being tested, and their relatives.

4 (2) OTHER USES PROHIBITED.—Agencies and
5 private entities may only access, use, or store any
6 personal DNA information collected under this sub-
7 section for family reunification purposes and are
8 prohibited from sharing any such data or samples
9 with agencies other than those carrying out the re-
10 unification process. Information collected under this
11 section may not be used by any agency or contractor
12 for any other purpose, including criminal or immi-
13 gration enforcement.

14 (d) DNA MATCH.—

15 (1) REUNIFICATION.—As soon as a DNA
16 match is identified, the agencies shall reunite family
17 members as expeditiously as possible.

18 (2) NO MATCH; NO CONSENT.—A refusal to
19 consent to a DNA test or the failure to identify a
20 match between a child and an apprehended parent
21 may not be used as a basis for concluding that there
22 is no familial relationship between a such child and
23 such parent if—

24 (A) the familial relationship is not biologi-
25 cal; or

1 (B) the familial relationship may be estab-
2 lished through alternative means.

3 **SEC. 5. ENHANCED PROTECTIONS FOR SEPARATE FAMI-**
4 **LIES.**

5 (a) IN GENERAL.—The Secretary of Homeland Secu-
6 rity shall establish secure alternatives programs that in-
7 corporate case management services in each field office of
8 the Department of Homeland Security to ensure appear-
9 ances at immigration proceedings and public safety.

10 (b) ALTERNATIVES TO DETENTION.—

11 (1) CONTRACT AUTHORITY.—The Secretary of
12 Homeland Security shall contract with nongovern-
13 mental, community-based organizations to conduct
14 screening of detainees, provide appearance assist-
15 ance services, and operate community-based super-
16 vision programs. Secure alternatives shall offer a
17 continuum of supervision mechanisms and options,
18 including community support, depending on an as-
19 sessment of each individual's circumstances. The
20 Secretary may contract with nongovernmental orga-
21 nizations to implement secure alternatives that
22 maintain custody over the alien.

23 (2) ELIGIBILITY DETERMINATION.—

24 (A) RELEASE.—The Secretary of Home-
25 land Security shall release each apprehended

parent or legal guardian on recognizance, parole, or bond, or permit such parent or legal guardian to participate in an alternative to detention program, such as the Family Case Management Program authorized under subsection (c), unless the Secretary demonstrates that such participation would create a substantial risk that the apprehended parent or legal guardian is likely to cause harm to himself, herself, or others.

(B) BURDEN OF PROOF.—In order to demonstrate that continued detention is necessary, the Secretary shall produce clear and convincing evidence of risk factors, including credible and individualized information.

(C) APPEAL.—Not later than 72 hours after the Secretary determines that an apprehended parent or legal guardian is ineligible for an alternative to detention program under this subsection, the parent or legal guardian shall be provided with an opportunity to appeal such determination in a hearing before an immigration judge.

(c) RESTORATION OF THE FAMILY CASE MANAGEMENT PROGRAM.—

1 (1) IN GENERAL.—Not later than 7 days after
2 the after the date of the enactment of this Act, the
3 Secretary of Homeland Security shall restore the
4 U.S. Immigration and Customs Enforcement Family
5 Case Management Program, which shall provide
6 community supervision and community support serv-
7 ices, including case management services, appear-
8 ance services, and screening of aliens who have been
9 detained be run through a contract with a not-for-
10 profit entity.

11 (2) CONTRACT.—Any contract for programming
12 or services described in paragraph (1) shall be
13 awarded to a not-for-profit organization with dem-
14 onstrated expertise in meeting the areas specified in
15 paragraph (1).

16 (d) UNACCOMPANIED ALIEN CHILD DESIGNATION.—
17 The Secretary of Homeland Security shall treat a child
18 who has been separated from an apprehended parent or
19 legal guardian and has been designated as unaccompanied
20 alien child as an unaccompanied alien child for the dura-
21 tion of his or her immigration proceedings.

22 (e) AUTOMATIC STAY OF REMOVAL OF PARENTS AND
23 LEGAL GUARDIANS DURING CHILD’S IMMIGRATION PRO-
24 CEEDINGS.—Until the earlier of the date on which the
25 child’s immigration proceedings are concluded or the date

1 on which the child reaches 18 years of age, the Secretary
2 of Homeland Security may not remove an apprehended
3 parent or legal guardian of such child from the United
4 States unless the apprehended parent or legal guardian,
5 after being afforded the opportunity for legal consultation,
6 agrees to removal.

7 **SEC. 6. CONFIDENTIALITY.**

8 (a) IN GENERAL.—Except as provided in subsections
9 (b) and (c), the Secretary of Homeland Security may not
10 use information obtained or recorded pursuant to this Act
11 to assist in immigration enforcement actions taken against
12 any sponsor, potential sponsor, custodian, potential custo-
13 dian, or household member of a child or apprehended par-
14 ent or legal guardian.

15 (b) EXCEPTION.—Subsection (a) does not apply to
16 the use of information described in that subsection about
17 a particular sponsor, potential sponsor, custodian, poten-
18 tial custodian, or household member for purposes of a law
19 enforcement investigation related to—

20 (1) forced labor or human trafficking under
21 section 1589, 1590, or 1591 of title 18, United
22 States Code; or

23 (2) child exploitation under section 2251,
24 2251A, 2252, or 2252A of title 18, United States
25 Code.

1 **SEC. 7. ESTABLISHMENT OF OFFICE FOR LOCATING AND**
2 **REUNITING CHILDREN WITH PARENTS.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-
4 rity, the Attorney General, and the Secretary of Health
5 and Human Services (referred to collectively in this sec-
6 tion as the “Secretaries”) shall jointly establish an inter-
7 agency office, which shall be known as the “Office for Lo-
8 cating and Reuniting Children with Parents” (referred to
9 in this section as the “Office”) and shall be responsible
10 for expediting and facilitating the reunification of alien
11 children and parents separated after entering the United
12 States.

13 (b) DUTIES.—The Office shall—

14 (1) expeditiously implement guidance des-
15 igned for its jurisdiction under section 3;

16 (2) establish 24-hour priority data and informa-
17 tion communication networks between HHS, DHS,
18 and the Department of Justice; and

19 (3) identify and immediately inform Congress if
20 the Office determines that insufficient appropria-
21 tions, or any other statutory or regulatory condition
22 hinders the safe and timely reunion of separated
23 alien children with their parents, pursuant to rule-
24 making promulgated under section 3.

25 (c) REPORT.—The Office shall submit a weekly re-
26 port to Congress that includes—

1 (1) the number and location of children in the
2 physical custody of DHS or HHS who have been
3 separated from an apprehend parent or legal guard-
4 ian;

5 (2) the number of such children who have been
6 physically reunified with their parent or legal guard-
7 ian;

8 (3) the physical location of parents who have
9 yet to be reunited with their children, including the
10 parents who have been deported without their chil-
11 dren;

12 (4) the number of such children who have not
13 yet been physically reunited with their parent or
14 legal guardian; and

15 (5) an outline of the progress made in imple-
16 menting the guidance published pursuant to section
17 3(a).

18 **SEC. 8. SAVINGS PROVISIONS.**

19 (a) **FEDERAL LAW.**—Nothing in this Act may be con-
20 strued to supersede or modify—

21 (1) the William Wilberforce Trafficking Victims
22 Protection Act of 2008 (8 U.S.C. 1232 et seq.);

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

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

3 (3) the Homeland Security Act of 2002 (Public
4 Law 107–296); or

5 (4) any applicable Federal child welfare law, in-
6 cluding the Adoption and Safe Families Act of 1997
7 (Public Law 105–89).

8 (b) STATE LAW.—Nothing in this Act may be con-
9 strued to supersede or modify any applicable State child
10 welfare laws.

11 **SEC. 9. REALLOCATION OF DEPARTMENT OF HOMELAND**
12 **SECURITY APPROPRIATIONS.**

13 (a) IN GENERAL.—Of the amount allocated to U.S.
14 Immigration and Customs Enforcement for fiscal year
15 2018 for enforcement, detention, and removal operations,
16 \$50,000,000 shall be reallocated to carry out sections 3
17 and 5(a).

18 (b) REUNIFICATION.—Not less than \$15,000,000 of
19 the amount reallocated under subsection (a) shall be made
20 available to carry out section 3.

○