

H. R. 3401

One Hundred Sixteenth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

Making emergency supplemental appropriations for the fiscal year ending September 30, 2019, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2019, and for other purposes, namely:

TITLE I

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

For an additional amount for “Executive Office for Immigration Review”, \$65,000,000, of which \$45,000,000 shall be for the hiring of 30 additional Immigration Judge Teams, of which \$10,000,000 shall be used for the purchase or lease of immigration judge courtroom space and equipment, and of which \$10,000,000 shall be used only for services and activities provided by the Legal Orientation Program: *Provided*, That Immigration Judge Teams shall include appropriate attorneys, law clerks, paralegals, court administrators, and other support staff: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

UNITED STATES MARSHALS SERVICE

FEDERAL PRISONER DETENTION

For an additional amount for “Federal Prisoner Detention”, for necessary expenses related to United States prisoners in the custody of the United States Marshals Service, to be used only as authorized by section 4013 of title 18, United States Code, \$155,000,000, to remain available until expended: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

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TITLE II

DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for “Operation and Maintenance, Army”, \$92,800,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for “Operation and Maintenance, Marine Corps”, \$13,025,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Operation and Maintenance, Air Force”, \$18,000,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for “Operation and Maintenance, Army National Guard”, \$21,024,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE III

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

OPERATIONS AND SUPPORT

For an additional amount for “Operations and Support” for necessary expenses to respond to the significant rise in aliens at the southwest border and related activities, \$1,015,431,000; of which \$819,950,000 shall be available until September 30, 2020:

Provided, That of the amounts provided under this heading, \$708,000,000 is for establishing and operating migrant care and processing facilities, \$111,950,000 is for consumables and medical care, \$35,000,000 is for transportation, \$110,481,000 is for temporary duty and overtime costs including reimbursements, and \$50,000,000 is for mission support data systems and analysis: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for “Procurement, Construction, and Improvements” for migrant care and processing facilities, \$85,000,000, to remain available until September 30, 2023: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

OPERATIONS AND SUPPORT

For an additional amount for “Operations and Support” for necessary expenses to respond to the significant rise in aliens at the southwest border and related activities, \$208,945,000: *Provided*, That of the amounts provided under this heading, \$35,943,000 is for transportation of unaccompanied alien children, \$11,981,000 is for detainee transportation for medical needs, court proceedings, or relocation from U.S. Customs and Border Protection custody, \$20,000,000 is for alternatives to detention, \$45,000,000 is for detainee medical care, \$69,735,000 is for temporary duty, overtime, and other on-board personnel costs including reimbursements, \$5,000,000 is for the Office of Professional Responsibility for background investigations and facility inspections, and \$21,286,000 is for Homeland Security Investigations human trafficking investigations: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL ASSISTANCE

For an additional amount for “Federal Assistance”, \$30,000,000, to remain available until September 30, 2020, for the emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.) for the purposes of providing assistance to aliens released from the custody of the Department of Homeland Security: *Provided*, That notwithstanding sections 315 and 316(b) of such Act, funds made available under this section shall be disbursed by the Emergency Food and Shelter Program National Board not later than 30 days after the date on which such funds become available: *Provided further*, That the

Emergency Food and Shelter Program National Board shall distribute such funds only to jurisdictions or local recipient organizations serving communities that have experienced a significant influx of such aliens: *Provided further*, That such funds may be used to reimburse such jurisdictions or local recipient organizations for costs incurred in providing services to such aliens on or after January 1, 2019: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 301. Notwithstanding any other provision of law, funds made available under each heading in this title shall only be used for the purposes specifically described under that heading.

SEC. 302. Division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6) is amended by adding after section 540 the following:

“SEC. 541. (a) Section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) shall be applied—

“(1) In subsection (a), by substituting ‘September 30, 2019,’ for ‘September 30, 2017,’; and

“(2) In subsection (c)(1), by substituting ‘September 30, 2019,’ for ‘September 30, 2017.’

“(b) The Secretary of Homeland Security, under the authority of section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391(a)), may carry out prototype projects under section 2371b of title 10, United States Code, and the Secretary shall perform the functions of the Secretary of Defense as prescribed.

“(c) The Secretary of Homeland Security under section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391(d)) may use the definition of nontraditional government contractor as defined in section 2371b(e) of title 10, United States Code.”.

SEC. 303. None of the funds provided in this Act under “U.S. Customs and Border Protection—Operations and Support” for facilities shall be available until U.S. Customs and Border Protection establishes policies (via directive, procedures, guidance, and/or memorandum) and training programs to ensure that such facilities adhere to the National Standards on Transport, Escort, Detention, and Search, published in October of 2015: *Provided*, That not later than 90 days after the date of enactment of this Act, U.S. Customs and Border Protection shall provide a detailed report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on the Judiciary of the Senate, and the House Judiciary Committee regarding the establishment and implementation of such policies and training programs.

SEC. 304. No later than 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall provide a report on the number of U.S. Customs and Border Protection Officers assigned to northern border land ports of entry and temporarily assigned to the ongoing humanitarian crisis: *Provided*, That the report shall outline what resources and conditions would allow a return to northern border staffing levels that are no less than the number committed in the June 12, 2018 Department of Homeland Security Northern Border Strategy: *Provided further*, That the report shall include the number of officers temporarily assigned

to the southwest border in response to the ongoing humanitarian crisis, the number of days the officers will be away from their northern border assignment, the northern border ports from which officers are being assigned to the southwest border, and efforts being made to limit the impact on operations at each northern border land port of entry where officers have been temporarily assigned to the southwest border.

SEC. 305. None of the funds appropriated or otherwise made available by this Act or division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6) for the Department of Homeland Security may be used to relocate to the National Targeting Center the vetting of Trusted Traveler Program applications and operations currently carried out at existing locations unless specifically authorized by a statute enacted after the date of enactment of this Act.

SEC. 306. The personnel, supplies, or equipment of any component of the Department of Homeland Security may be deployed to support activities of the Department of Homeland Security related to the significant rise in aliens at the southwest border and related activities, and for the enforcement of immigration and customs laws, detention and removals of aliens crossing the border unlawfully, and investigations without reimbursement as jointly agreed by the detailing components.

TITLE IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES

REFUGEE AND ENTRANT ASSISTANCE

For an additional amount for “Refugee and Entrant Assistance”, \$2,881,552,000, to be merged with and available for the same period as funds appropriated in Public Law 115–245 “for carrying out such sections 414, 501, 462, and 235”, which shall be available for any purpose funded under such heading in such law: *Provided*, That if any part of the reprogramming described in the notification submitted by the Secretary of Health and Human Services (the “Secretary”) to the Committees on Appropriations of the House of Representatives and the Senate on May 16, 2019 has been executed, such amounts provided by this Act as are necessary shall be used to reverse such reprogramming: *Provided further*, That amounts allocated by the Secretary for costs of leases of property that include facilities to be used as hard-sided dormitories for which the Secretary intends to seek State licensure for the care of unaccompanied alien children, and that are executed under authorities transferred to the Director of the Office of Refugee Resettlement (ORR) under section 462 of the Homeland Security Act of 2002, shall remain available until expended: *Provided further*, That ORR shall notify the Committees on Appropriations of the House of Representatives and the Senate within 72 hours of conducting a formal assessment of a facility for possible lease or acquisition and within 7 days of any acquisition or lease of real property: *Provided further*, That not less than \$866,000,000 of amounts provided under this heading shall be used for the provision of care in licensed shelters and for expanding the supply of shelters for which State licensure will be sought, of which not less than \$27,000,000 shall be available for the purposes of adding shelter

beds in State-licensed facilities in response to funding opportunity HHS-2017-ACF-ORR-ZU-1132, and of which not less than \$185,000,000 shall be available for expansion grants to add beds in State-licensed facilities and open new State-licensed facilities, and for contract costs to acquire, activate, and operate facilities that will include small- and medium-scale hard-sided facilities for which the Secretary intends to seek State licensure in an effort to phase out the need for shelter beds in unlicensed facilities: *Provided further*, That not less than \$100,000,000 of amounts provided under this heading shall be used for post-release services, child advocates, and legal services: *Provided further*, That not less than \$8,000,000 of amounts provided under this heading shall be used for the purposes of hiring additional Federal Field Specialists and for increasing case management and case coordination services, with the goal of more expeditiously placing unaccompanied alien children with sponsors and reducing the length of stay in ORR custody: *Provided further*, That not less than \$1,000,000 of amounts provided under this heading shall be used for the purposes of hiring project officers and program monitor staff dedicated to pursuing strategic improvements to the Unaccompanied Alien Children program and for the development of a discharge rate improvement plan which shall be submitted to the Committees on Appropriations of the House of Representatives and the Senate within 120 days of enactment of this Act: *Provided further*, That of the amounts provided under this heading, \$5,000,000 shall be transferred to “Office of the Secretary—Office of Inspector General” and shall remain available until expended for oversight of activities supported with funds appropriated under this heading: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 401. The Secretary of Health and Human Services (the “Secretary”) shall prioritize use of community-based residential care (including long-term and transitional foster care and small group homes) and shelter care other than large-scale institutional shelter facilities to house unaccompanied alien children in its custody. The Secretary shall prioritize State-licensed and hard-sided dormitories.

SEC. 402. The Office of Refugee Resettlement shall ensure that its grantees and, to the greatest extent practicable, potential sponsors of unaccompanied alien children are aware of current law regarding the use of information collected as part of the sponsor suitability determination process.

SEC. 403. (a) None of the funds provided by this or any prior appropriations Act may be used to reverse changes in procedures made by operational directives issued to providers by the Office of Refugee Resettlement on December 18, 2018, March 23, 2019, and June 10, 2019 regarding the Memorandum of Agreement on Information Sharing executed April 13, 2018.

(b) Notwithstanding subsection (a), the Secretary may make changes to such operational directives upon making a determination that such changes are necessary to prevent unaccompanied alien children from being placed in danger, and the Secretary shall provide a written justification to Congress and the Inspector General

of the Department of Health and Human Services in advance of implementing such changes.

(c) Within 15 days of the Secretary's communication of the justification, the Inspector General of the Department of Health and Human Services shall provide an assessment, in writing, to the Secretary and to Committees on Appropriations of the House of Representatives and the Senate of whether such changes to operational directives are necessary to prevent unaccompanied children from being placed in danger.

SEC. 404. None of the funds made available in this Act under the heading "Department of Health and Human Services—Administration for Children and Families—Refugee and Entrant Assistance" may be obligated to a grantee or contractor to house unaccompanied alien children (as such term is defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))) in any facility that is not State-licensed for the care of unaccompanied alien children, except in the case that the Secretary determines that housing unaccompanied alien children in such a facility is necessary on a temporary basis due to an influx of such children or an emergency, provided that—

(1) the terms of the grant or contract for the operations of any such facility that remains in operation for more than six consecutive months shall require compliance with—

(A) the same requirements as licensed placements, as listed in Exhibit 1 of the Flores Settlement Agreement that the Secretary determines are applicable to non-State licensed facilities; and

(B) staffing ratios of one (1) on-duty Youth Care Worker for every eight (8) children or youth during waking hours, one (1) on-duty Youth Care Worker for every sixteen (16) children or youth during sleeping hours, and clinician ratios to children (including mental health providers) as required in grantee cooperative agreements;

(2) the Secretary may grant a 60-day waiver for a contractor's or grantee's non-compliance with paragraph (1) if the Secretary certifies and provides a report to Congress on the contractor's or grantee's good-faith efforts and progress towards compliance;

(3) not more than four consecutive waivers under paragraph (2) may be granted to a contractor or grantee with respect to a specific facility;

(4) ORR shall ensure full adherence to the monitoring requirements set forth in section 5.5 of its Policies and Procedures Guide as of May 15, 2019;

(5) for any such unlicensed facility in operation for more than three consecutive months, ORR shall conduct a minimum of one comprehensive monitoring visit during the first three months of operation, with quarterly monitoring visits thereafter; and

(6) not later than 60 days after the date of enactment of this Act, ORR shall brief the Committees on Appropriations of the House of Representatives and the Senate outlining the requirements of ORR for influx facilities including any requirement listed in paragraph (1)(A) that the Secretary has determined are not applicable to non-State licensed facilities.

SEC. 405. In addition to the existing Congressional notification for formal site assessments of potential influx facilities, the Secretary shall notify the Committees on Appropriations of the House of Representatives and the Senate at least 15 days before operationalizing an unlicensed facility, and shall (1) specify whether the facility is hard-sided or soft-sided, and (2) provide analysis that indicates that, in the absence of the influx facility, the likely outcome is that unaccompanied alien children will remain in the custody of the Department of Homeland Security for longer than 72 hours or that unaccompanied alien children will be otherwise placed in danger. Within 60 days of bringing such a facility online, and monthly thereafter, the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report detailing the total number of children in care at the facility, the average length of stay and average length of care of children at the facility, and, for any child that has been at the facility for more than 60 days, their length of stay and reason for delay in release.

SEC. 406. (a) The Secretary shall ensure that, when feasible, no unaccompanied alien child is at an unlicensed facility if the child—

- (1) is not expected to be placed with a sponsor within 30 days;
- (2) is under the age of 13;
- (3) does not speak English or Spanish as his or her preferred language;
- (4) has known special needs, behavioral health issues, or medical issues that would be better served at an alternative facility;
- (5) is a pregnant or parenting teen; or
- (6) would have a diminution of legal services as a result of the transfer to such an unlicensed facility.

(b) ORR shall notify a child's attorney of record in advance of any transfer, where applicable.

SEC. 407. None of the funds made available in this Act may be used to prevent a United States Senator or Member of the House of Representatives from entering, for the purpose of conducting oversight, any facility in the United States used for the purpose of maintaining custody of, or otherwise housing, unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))), provided that such Senator or Member has coordinated the oversight visit with the Office of Refugee Resettlement not less than two business days in advance to ensure that such visit would not interfere with the operations (including child welfare and child safety operations) of such facility.

SEC. 408. Not later than 14 days after the date of enactment of this Act, and monthly thereafter, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and make publicly available online, a report with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security (DHS) (regardless of whether or not such separation was pursuant to an option selected by the children, parents, or guardians), subsequently classified as unaccompanied alien children, and transferred to the care and custody of ORR during the previous month. Each report shall contain the following information:

(1) the number and ages of children so separated subsequent to apprehension at or between ports of entry, to be reported by sector where separation occurred; and

(2) the documented cause of separation, as reported by DHS when each child was referred.

SEC. 409. Funds made available in this Act under the heading “Department of Health and Human Services—Administration for Children and Families—Refugee and Entrant Assistance” shall be subject to the authorities and conditions of section 224 of division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6).

SEC. 410. Not later than 30 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan of anticipated uses of funds made available in this account, including the following: a list of existing grants and contracts for both permanent and influx facilities, including their costs, capacity, and timelines; costs for expanding capacity through the use of community-based residential care placements (including long-term and transitional foster care and small group homes) through new or modified grants and contracts; current and planned efforts to expand small-scale shelters and available foster care placements, including collaboration with state child welfare providers; influx facilities being assessed for possible use, costs and services to be provided for legal services, child advocates, and post release services; program administration; and the average number of weekly referrals and discharge rate assumed in the spend plan: *Provided*, That such plan shall be updated to reflect changes and expenditures and submitted to the Committees on Appropriations of the House of Representatives and the Senate every 60 days until all funds are expended or expired.

TITLE V

GENERAL PROVISIONS—THIS ACT

SEC. 501. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2019.

SEC. 504. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 505. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President,

and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

SEC. 506. Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate on the number of asylum officers and immigration judges, including temporary immigration judges, and the corresponding number of support staff necessary—

(1) to fairly and effectively make credible fear determinations with respect to individuals within family units and unaccompanied alien children;

(2) to ensure that the credible fear determination and asylum interview is completed not later than 20 days after the date on which a family unit is apprehended; and

(3) to fairly and effectively review appeals of credible fear determinations with respect to individuals within family units and unaccompanied alien children.

In addition, the report shall determine if there is any physical infrastructure such as hearing or courtroom space needed to achieve these goals.

This Act may be cited as the “Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*