

115TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

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
9 from his or her parent or legal guardian, at or near the

1 port of entry or within 100 miles of the border of the
2 United States, unless one of the following has occurred:

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

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

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

23 (A) the child is a victim of trafficking or
24 is at significant risk of becoming a victim of
25 trafficking;

1 (B) there is a strong likelihood that the
2 adult is not the parent or legal guardian of the
3 child; or

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

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

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

17 **SEC. 3. RECOMMENDATIONS FOR SEPARATION BY AGENTS**
18 **OR OFFICERS.**

19 (a) IN GENERAL.—Not later than 180 days after the
20 date of the enactment of this Act, the Secretary, in con-
21 sultation with the Secretary of Health and Human Serv-
22 ices, shall develop training and guidance, with an empha-
23 sis on the best interests of the child, childhood trauma,
24 attachment, and child development, for use by the agents

1 and officers, in order to standardize the implementation
2 of section 2(a)(3).

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

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

13 (d) ADDITIONAL REQUIREMENTS.—

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

17 (2) TRAINING REQUIRED.—

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

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

1 (i) training on adherence to the guid-
2 ance under this section; and

3 (ii) 90 minutes of child welfare prac-
4 tice training that is evidence-based and
5 trauma-informed.

6 **SEC. 4. PRESUMPTIONS.**

7 The presumptions described in this section are the
8 following:

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

11 (2) SIBLINGS.—To the maximum extent prac-
12 ticable, the Secretary shall ensure that sibling
13 groups remain intact.

14 (3) DETENTION.—In general, there is a pre-
15 sumption that detention is not in the best interests
16 of families and children.

17 **SEC. 5. REQUIRED POLICY FOR LOCATING SEPARATED**
18 **CHILDREN.**

19 (a) IN GENERAL.—Not later than 180 days after the
20 after the date of the enactment of this Act, the Secretary
21 shall publish final public guidance that describes, with
22 specificity, the manner in which a parent or legal guardian
23 may locate a child who was separated from the parent or
24 legal guardian under section 2(a). In developing the public
25 guidance, the Secretary shall consult with the Secretary

1 of Health and Human Services, immigrant advocacy orga-
2 nizations, child welfare organizations, and State child wel-
3 fare agencies.

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

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

12 **SEC. 6. REQUIRED INFORMATION FOR SEPARATED FAMI-**
13 **LIES.**

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

18 (1) A status report on the monthly activities of
19 the child.

20 (2) Information about the education and health
21 of the child, including any medical treatment pro-
22 vided to the child or medical treatment rec-
23 ommended for the child.

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

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

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

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

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

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

13 (3) The length of separation.

14 (4) Whether the adult was charged with a
15 crime, and if the adult was charged with a crime,
16 the type of crime.

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

20 (6) Whether the adult was prosecuted if
21 charged with a crime and the associated outcome of
22 such charges.

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

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

4 (9) Whether the child was rendered an unac-
5 panied alien child.

6 (10) Other information in the Secretary's dis-
7 cretion.

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

9 If a child is separated from a parent or legal guard-
10 ian, and a State court has not made a determination that
11 the parental rights have been terminated, there is a pre-
12 sumption that—

13 (1) the parental rights remain intact; and

14 (2) the separation does not constitute an af-
15 firmative determination of abuse or neglect under
16 Federal or State law.

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

18 (a) FEDERAL LAW.—Nothing in this Act shall be in-
19 terpreted to supersede or modify Federal child welfare law,
20 where applicable, including the Adoption and Safe Fami-
21 lies Act of 1997 (Public Law 105–89).

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

1 **SEC. 10. GAO REPORT ON PROSECUTION OF ASYLUM SEEKERS.**
2 **ERS.**

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

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

10 (2) an overview and analysis of the metrics
11 used by the Department of Homeland Security and
12 the Department of Justice to track the number of
13 asylum seekers referred for prosecution;

14 (3) the total number of asylum seekers referred
15 for prosecution, a breakdown and description of the
16 criminal charges filed against asylum seekers during
17 such period, and a breakdown and description of the
18 convictions secured;

19 (4) the total number of asylum seekers who
20 were separated from their children as a result of
21 being referred for prosecution;

22 (5) a breakdown of the resources spent on pros-
23 ecuting asylum seekers during such period, as well
24 as any diversion of resources required to prosecute
25 asylum seekers, and any costs imposed on States
26 and localities;

1 (6) the total number of asylum seekers who
2 were referred for prosecution and also went through
3 immigration proceedings; and

4 (7) the total number of asylum seekers referred
5 for prosecution who were deported before going
6 through immigration proceedings.

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

11 **SEC. 11. DEFINITIONS.**

12 In this Act:

13 (1) AGENT; OFFICER.—The terms “agent” and
14 “officer” include contractors of the Federal Govern-
15 ment.

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

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

19 (B) has no permanent immigration status.

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

22 (A) the Committee on the Judiciary and
23 the Committee on Health, Education, Labor,
24 and Pensions of the Senate; and

1 (B) the Committee on the Judiciary of the
2 House of Representatives.

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

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

10 (A) the Department of Homeland Security;

11 (B) the Department of Justice; and

12 (C) the Department of Health and Human
13 Services.

14 (6) FINDING.—The term “finding” means an
15 individualized written assessment or screening by the
16 trained agent or officer that includes a consultation
17 with a child welfare specialist, formalized as required
18 under section 2(c) and consistent with sections 3, 4,
19 and 8.

20 (7) SECRETARY.—Unless otherwise specified,
21 the term “Secretary” means the Secretary of Home-
22 land Security.