

116TH CONGRESS
1ST SESSION

H. R. 541

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2019

Mr. NADLER (for himself, Ms. LOFGREN, Ms. JAYAPAL, Mr. TED LIEU of California, Mr. PANETTA, Mr. AGUILAR, Ms. BARRAGÁN, Ms. BASS, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN of Maryland, Ms. BROWNLEY of California, Mrs. BUSTOS, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTWRIGHT, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Ms. JUDY CHU of California, Mr. CICILLINE, Mr. CISNEROS, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLAY, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. CORREA, Mr. COSTA, Mr. COURTNEY, Mr. COX of California, Mr. CRIST, Mr. CROW, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Mrs. DAVIS of California, Ms. DEAN, Mr. DEFazio, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mrs. DEMINGS, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. ENGEL, Ms. ESCOBAR, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Mr. FOSTER, Ms. FRANKEL, Ms. FUDGE, Ms. GABBARD, Mr. GALLEGO, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOMEZ, Mr. GONZALEZ of Texas, Mr. GRIJALVA, Ms. HAALAND, Mr. HARDER of California, Mr. HASTINGS, Mrs. HAYES, Mr. HECK, Mr. HIGGINS of New York, Ms. HILL of California, Mr. HIMES, Mr. HORSFORD, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. KEATING, Ms. KELLY of Illinois, Mr. KENNEDY, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KIND, Mr. KRISHNAMOORTHY, Ms. KUSTER of New Hampshire, Mr. LAMB, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Mr. LEVIN of Michigan, Mr. LEWIS, Mr. LIPINSKI, Mr. LOEBSACK, Mr. LOWENTHAL, Mrs. LOWEY, Mr. LUJÁN, Mrs. LURIA, Mr. LYNCH, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MATSUI, Mr. MCADAMS, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE, Mr. MORELLE, Mr. MOULTON, Mrs. MURPHY, Mrs. NAPOLITANO, Mr. NEGUSE, Mr. NORCROSS, Ms. NORTON, Mr. O'HALLERAN, Ms. OMAR, Mr. PALLONE, Mr. PASCRELL, Mr. PAYNE, Mr. PERLMUTTER, Mr.

PETERS, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Mr. RICHMOND, Mr. ROUDA, Ms. ROYBAL-ALLARD, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN, Mr. SABLAN, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SCHRADER, Ms. SCHRIER, Mr. DAVID SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Ms. SEWELL of Alabama, Ms. SHALALA, Mr. SHERMAN, Mr. SIRES, Mr. SMITH of Washington, Mr. SOTO, Ms. SPANBERGER, Ms. SPEIER, Mr. STANTON, Mr. SUOZZI, Mr. SWALWELL of California, Mr. TAKANO, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Mrs. TORRES of California, Mr. VARGAS, Mr. VEASEY, Mr. VELA, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WEXTON, Ms. WILD, Ms. WILSON of Florida, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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
 10 port of entry or within 100 miles of a border of the United
 11 States, unless one of the following has occurred:

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

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

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

21 (A) the child is a victim of trafficking or
22 is at significant risk of becoming a victim of
23 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 except that, in the case that a child is removed from
8 his or her parent or legal guardian under this sec-
9 tion, an independent child welfare expert licensed by
10 the State or county in which the child was so re-
11 moved, authorizes the separation not later than 48
12 hours after such removal, and if such expert does
13 not authorize such separation, the child shall be re-
14 united with his or her parent or legal guardian not
15 later than 48 hours after such determination.

16 (b) PROHIBITION ON SEPARATION.—

17 (1) IN GENERAL.—A designated agency may
18 not remove a child from a parent or legal guardian
19 solely for the policy goal of deterring individuals
20 from migrating to the United States or for the pol-
21 icy goal of promoting compliance with civil immigra-
22 tion laws.

23 (2) PENALTY FOR FAMILY SEPARATION.—Any
24 person who knowingly separates a child from his or

1 her parent or legal guardian in violation of this sec-
2 tion, shall be fined not more than \$10,000.

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

8 **SEC. 3. RECOMMENDATIONS FOR SEPARATION BY AGENTS**
9 **OR OFFICERS.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 date of the enactment of this Act, the Secretary, in con-
12 sultation with the Secretary of Health and Human Serv-
13 ices and with child welfare and child development profes-
14 sionals and organizations, shall develop training and guid-
15 ance, with an emphasis on the best interests of the child,
16 childhood trauma, attachment, and child development, for
17 use by agents and officers of designated agencies, in order
18 to standardize the implementation of section 2(a)(3).

19 (b) ANNUAL REVIEW.—Not less frequently than an-
20 nually, the Secretary of Health and Human Services shall
21 review the guidance developed under subsection (a) and
22 make recommendations to the Secretary to ensure such
23 guidance is in accordance with current evidence and best
24 practices in child welfare, child development, and child-
25 hood trauma.

1 (c) REQUIREMENT.—The guidance under subsection
2 (a) shall incorporate the presumptions described in section
3 4.

4 (d) ADDITIONAL REQUIREMENTS.—

5 (1) EVIDENCE-BASED.—The guidance and
6 training developed under this section shall incor-
7 porate evidence-based practices.

8 (2) TRAINING REQUIRED.—

9 (A) All agents and officers of designated
10 agencies, upon hire, and annually thereafter,
11 shall complete training on adherence to the
12 guidance under this section.

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

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

18 (ii) 90 minutes of child welfare prac-
19 tice training that is evidence-based and
20 trauma-informed.

21 **SEC. 4. PRESUMPTIONS.**

22 The presumptions described in this section are the
23 following:

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

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

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

7 **SEC. 5. REQUIRED POLICY FOR LOCATING SEPARATED**
8 **CHILDREN.**

9 (a) IN GENERAL.—Not later than 180 days after the
10 after the date of the enactment of this Act, the Secretary
11 shall publish final public guidance that describes, with
12 specificity, the manner in which a parent or legal guardian
13 may locate a child who was separated from the parent or
14 legal guardian under section 2(a). In developing the public
15 guidance, the Secretary shall consult with the Secretary
16 of Health and Human Services, immigrant advocacy orga-
17 nizations, child welfare organizations, and State child wel-
18 fare agencies.

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

23 (c) LANGUAGE ACCESS.—All guidance shall be avail-
24 able in English and Spanish, and at the request of the
25 parent or legal guardian, either in the parent or legal

1 guardian's native language or in another language the
2 parent or legal guardian understands, and manner that
3 is understandable by the parent or legal guardian.

4 **SEC. 6. REQUIRED INFORMATION FOR SEPARATED FAMI-**
5 **LIES.**

6 (a) IN GENERAL.—Except as provided under sub-
7 section (c), the Secretary of Health and Human Services,
8 in consultation with the heads of other designated agen-
9 cies, on a weekly basis, shall provide the parent or legal
10 guardian of a child who was separated, the following infor-
11 mation, at a minimum:

12 (1) A status report on the child's activities dur-
13 ing the prior week.

14 (2) Information about the education and health
15 of the child, including any medical treatment pro-
16 vided to the child or medical treatment rec-
17 ommended for the child.

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

20 (4) Other information about the child, designed
21 to promote and maintain family reunification, as the
22 Secretary of Health and Human Services determines
23 in his or her discretion.

24 (b) PHONE COMMUNICATION.—Except as provided
25 under subsection (c), the Secretary of Health and Human

1 Services, in consultation with the heads of other des-
2 ignated agencies, on a weekly basis, shall provide the par-
3 ent or legal guardian of a child who was separated with
4 phone communication between the parent or legal guard-
5 ian and his or her child.

6 (c) EXCEPTION.—No information under subsection
7 (a) or phone communication under subsection (b) shall be
8 provided to a parent or legal guardian in the case that
9 a qualified child welfare expert with care and custody of
10 the child, a child’s advocate, the child’s legal representa-
11 tion, or the child him or herself concludes it is harmful
12 or dangerous to the child to communicate with the parent
13 or legal guardian.

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

15 Not later than 180 days after the date of the enact-
16 ment of this Act, and every 6 months thereafter, the Sec-
17 retary, in consultation with the heads of other designated
18 agencies, shall submit a report to the committees of juris-
19 diction, describing each instance in which a child was sep-
20 arated from a parent or legal guardian, including the fol-
21 lowing:

- 22 (1) The relationship of the adult to the child.
- 23 (2) The age and gender of the adult and child.
- 24 (3) The length of separation.

1 (4) Whether the adult was charged with a
2 crime, and if the adult was charged with a crime,
3 the type of crime.

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

7 (6) Whether the adult was prosecuted if
8 charged with a crime and the associated outcome of
9 such charges.

10 (7) Whether a referral for investigation was
11 made to a child welfare or law enforcement agency
12 when section 2(a)(3) was the justification for sepa-
13 ration.

14 (8) The stated reason for, and evidence in sup-
15 port of, the separation.

16 (9) If the child was part of a sibling group at
17 the time of the separation, whether the group has
18 had physical contact and visitation.

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

21 (11) Other information in the Secretary's dis-
22 cretion.

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

24 If a child is separated from a parent or legal guard-
25 ian, and a State court has not made a determination that

1 the parental rights have been terminated, there is a pre-
2 sumption that—

3 (1) the parental rights remain intact; and

4 (2) the separation does not constitute an af-
5 firmative determination of abuse or neglect under
6 Federal or State law.

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

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

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

15 **SEC. 10. LIMITATION ON THE PROSECUTION OF ASYLUM**
16 **SEEKERS.**

17 (a) IN GENERAL.—An alien who has expressed a
18 credible or reasonable fear of persecution, filed an applica-
19 tion for asylum or withholding of removal, or expressed
20 an intent to file such an application, may not be pros-
21 ecuted under section 275(a) or 276(a) of the Immigration
22 and Nationality Act (8 U.S.C. 1325(a), 1326(a)) until the
23 date on which any such application has been finally adju-
24 dicated, including any appeals thereto.

1 (b) AFFIRMATIVE DEFENSE.—In the case that an
2 alien is prosecuted under section 275(a) or 276(a) of the
3 Immigration and Nationality Act (8 U.S.C. 1325(a),
4 1326(a)) in violation of subsection (a), it shall be a de-
5 fense that the alien has expressed a credible or reasonable
6 fear of persecution, filed an application for asylum or
7 withholding of removal, or expressed an intent to file such
8 an application, and that such application has not been fi-
9 nally adjudicated, including any appeals thereto.

10 (c) TREATY OBLIGATIONS.—In accordance with the
11 treaty obligations of the United States under Article 31
12 of the United Nations Convention Relating to the Status
13 of Refugees, no alien who has been granted asylum or
14 withholding of removal in the United States may be pros-
15 ecuted under section 275(a) or 276(a) of the Immigration
16 and Nationality Act (8 U.S.C. 1325(a), 1326(a)).

17 **SEC. 11. DEFINITIONS.**

18 In this Act:

19 (1) DESIGNATED AGENCY.—The term “des-
20 ignated agency” means—

21 (A) the Department of Homeland Security;

22 (B) the Department of Justice; and

23 (C) the Department of Health and Human
24 Services.

1 (2) AGENT OR OFFICER.—The term “agent or
2 officer” includes contractors of the Federal Govern-
3 ment.

4 (3) CHILD.—The term “child” means an indi-
5 vidual who—

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

7 (B) has no permanent immigration status.

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

10 (A) the Committee on the Judiciary and
11 the Committee on Health, Education, Labor,
12 and Pensions of the Senate; and

13 (B) the Committee on the Judiciary and
14 the Committee on Education and Labor of the
15 House of Representatives.

16 (5) FINDING.—The term “finding” means an
17 individualized written assessment or screening for-
18 malized as required under section 2(c), and con-
19 sistent with sections 3, 4, and 8.

20 (6) IN DANGER OF ABUSE OR NEGLECT AT THE
21 HAND OF THE PARENT OR LEGAL GUARDIAN.—The
22 term “in danger of abuse or neglect at the hands of
23 the parent or legal guardian” does not include mi-
24 grating to or crossing of a border of the United
25 States.

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

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