

116TH CONGRESS
2D SESSION

H. R. 9040

To protect aliens seeking asylum in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 21, 2020

Mr. AMASH 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 protect aliens seeking asylum in the United States, and
for other purposes.

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 “Protect Asylum Seek-
5 ers Act”.

6 **SEC. 2. LIMITATION ON PROSECUTION OF ASYLUM SEEK-**
7 **ERS.**

8 Section 275 of the Immigration and Nationality Act
9 (8 U.S.C. 1325) is amended—

1 (1) in subsection (a), by striking “Any alien”
2 and inserting “Except as provided in subsection (e),
3 any alien”;

4 (2) in subsection (b), by striking “Any alien”
5 and inserting “Except as provided in subsection (e),
6 any alien”; and

7 (3) by adding at the end the following:

8 “(e)(1) Subsections (a)(1) and (b) shall not apply in
9 the case of an alien who presents himself to an immigra-
10 tion officer or an asylum officer without unnecessary delay
11 after entering the United States, and indicates an inten-
12 tion to apply for asylum under section 208 or a fear of
13 persecution (as defined in section 235(b)(1)(B)(v)).

14 “(2) The exception under this subsection applies re-
15 gardless of whether the alien is found to have a credible
16 fear of persecution, or is granted asylum, except in the
17 case that an asylum officer determines that the alien’s
18 claim for asylum or fear of persecution was fraudulent.
19 In the case that an asylum officer determines that a claim
20 for asylum is fraudulent under this paragraph, the officer
21 shall document such determination, and the reason for
22 such determination, in writing.

23 “(3) A claim for asylum or a fear of persecution may
24 not be determined to be fraudulent under paragraph (2)
25 on the basis that—

1 “(A) the alien entered or attempted to enter the
2 United States at any time or place other than as
3 designated by immigration officers;

4 “(B) the alien’s claim is based on fearing gang
5 violence or domestic violence; or

6 “(C) the alien entered or attempted to enter the
7 United States with the alien’s child who had not at-
8 tained the age of 18.”.

9 **SEC. 3. TRANSFER OF ASYLUM SEEKERS TO ASYLUM**
10 **INTERVIEW LOCATIONS.**

11 An alien who presents himself to an immigration offi-
12 cer or an asylum officer as described in section 275(e)(1)
13 of the Immigration and Nationality Act shall be trans-
14 ferred to a port of entry or place designated for asylum
15 interviews under section 235(b)(1)(B)(i) of that Act to un-
16 dergo an interview by an asylum officer under such section
17 235, unless the alien presents himself at such a location.

18 **SEC. 4. LIMITATION ON THE SEPARATION OF FAMILIES.**

19 (a) IN GENERAL.—An agent or officer of a des-
20 ignated agency may not remove a child from his or her
21 parent or legal guardian if the parent or legal guardian
22 has not been referred for prosecution, unless one of the
23 following has occurred:

24 (1) A State court, authorized under State law,
25 terminates the rights of a parent or legal guardian,

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

7 (2) An official from the State or county child
8 welfare agency with expertise in child trauma and
9 development makes a determination that it is in the
10 best interests of the child to be removed from his or
11 her parent or legal guardian because the child is in
12 danger of abuse or neglect at the hands of the par-
13 ent or legal guardian, or is a danger to himself or
14 others.

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

20 (A) the child is a victim of trafficking or
21 is at significant risk of becoming a victim of
22 trafficking;

23 (B) there is a strong likelihood that the
24 adult is not the parent or legal guardian of the
25 child; or

1 (C) the child is in danger of abuse or ne-
2 glect at the hands of the parent or legal guard-
3 ian, or is a danger to himself or others.

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

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

14 **SEC. 5. RECOMMENDATIONS FOR SEPARATION BY AGENTS**
15 **OR OFFICERS.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 date of the enactment of this Act, the Secretary, in con-
18 sultation with the Secretary of Health and Human Serv-
19 ices, shall develop training and guidance, with an empha-
20 sis on the best interests of the child, childhood trauma,
21 attachment, and child development, for use by agents and
22 officers of designated agencies, in order to standardize the
23 implementation of section 4(a)(3).

24 (b) ANNUAL REVIEW.—Not less frequently than an-
25 nually, the Secretary of Health and Human Services shall

1 review the guidance developed under subsection (a) and
2 make recommendations to the Secretary to ensure such
3 guidance is in accordance with current evidence and best
4 practices in child welfare, child development, and child-
5 hood trauma.

6 (c) REQUIREMENT.—The guidance under subsection
7 (a) shall incorporate the presumptions described in sub-
8 section (e).

9 (d) ADDITIONAL REQUIREMENTS.—

10 (1) EVIDENCE-BASED.—The guidance and
11 training developed under this section shall incor-
12 porate evidence-based practices.

13 (2) TRAINING REQUIRED.—

14 (A) All agents and officers of designated
15 agencies, upon hire, and annually thereafter,
16 shall complete training on adherence to the
17 guidance under this section.

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

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

23 (ii) 90 minutes of child welfare prac-
24 tice training that is evidence-based and
25 trauma-informed.

1 (e) PRESUMPTIONS.—The presumptions described in
2 this subsection are the following:

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

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

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

11 **SEC. 6. REQUIRED POLICY FOR LOCATING SEPARATED**
12 **CHILDREN.**

13 (a) IN GENERAL.—Not later than 180 days after the
14 date of the enactment of this Act, the Secretary shall pub-
15 lish final public guidance that describes, with specificity,
16 the manner in which a parent or legal guardian may locate
17 a child who was separated from the parent or legal guard-
18 ian under section 3(a). In developing the public guidance,
19 the Secretary shall consult with the Secretary of Health
20 and Human Services, immigrant advocacy organizations,
21 child welfare organizations, and State child welfare agen-
22 cies.

23 (b) WRITTEN NOTIFICATION.—The Secretary shall
24 provide each parent or legal guardian of a child who was

1 separated from the child with written notice of the public
2 guidance to locate the child.

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

7 **SEC. 7. REQUIRED INFORMATION FOR SEPARATED FAMI-**
8 **LIES.**

9 Not less frequently than once every month, the Sec-
10 retary shall provide the parent or legal guardian of a child
11 who was separated from the child the following informa-
12 tion, at a minimum:

13 (1) A status report on the monthly activities of
14 the child.

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

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

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

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

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

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

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

10 (3) The length of separation.

11 (4) Whether the adult was charged with a
12 crime, and if the adult was charged with a crime,
13 the type of crime.

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

17 (6) Whether the adult was prosecuted if
18 charged with a crime and the associated outcome of
19 such charges.

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

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

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

1 (10) Other information in the Secretary’s dis-
2 cretion.

3 The Secretary shall ensure that any information collected,
4 published, or otherwise made available under this section
5 does not reveal personally identifiable information.

6 **SEC. 9. CLARIFICATION OF PARENTAL RIGHTS.**

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

11 (1) the parental rights remain intact; and

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

15 **SEC. 10. CLARIFICATION OF EXISTING LAW.**

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

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

1 **SEC. 11. 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, 2020, 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). Such re-
11 port shall not reveal personally identifiable information.

12 **SEC. 12. DEFINITIONS.**

13 In this Act:

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

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

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

20 (B) has no permanent immigration status.

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

23 (A) the Committee on the Judiciary, the
24 Committee on Health, Education, Labor, and
25 Pensions, and the Committee on Homeland Se-

1 curity and Governmental Affairs of the Senate;
2 and

3 (B) the Committee on the Judiciary, the
4 Committee on Energy and Commerce, and the
5 Committee on Oversight and Reform of the
6 House of Representatives.

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

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

14 (A) the Department of Homeland Security;

15 (B) the Department of Justice; and

16 (C) the Department of Health and Human
17 Services.

18 (6) FINDING.—The term “finding” means an
19 individualized written assessment or screening by the
20 trained agent or officer that includes a consultation
21 with a child welfare specialist, formalized as required
22 under section 4(c) and consistent with sections 5
23 and 9.

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

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