

AMENDMENT NO. _____ Calendar No. _____

Purpose: To protect children affected by immigration enforcement actions.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FRANKEN (for himself, Mr. GRASSLEY, Mr. COONS, Ms. HIRONO, and Mrs. FEINSTEIN)

Viz:

1 At the end of title III, add the following:

2 **Subtitle H—Protection of Children**
 3 **Affected by Immigration En-**
 4 **forcement**

5 **SEC. 3801. SHORT TITLE.**

6 This subtitle may be cited as the “Humane Enforce-
 7 ment and Legal Protections for Separated Children Act”
 8 or the “HELP Separated Children Act”.

9 **SEC. 3802. DEFINITIONS.**

10 In this subtitle:

1 (1) APPREHENSION.—The term “apprehension”
2 means the detention or arrest by officials of the De-
3 partment or cooperating entities.

4 (2) CHILD.—The term “child” means an indi-
5 vidual who has not attained 18 years of age.

6 (3) CHILD WELFARE AGENCY.—The term
7 “child welfare agency” means a State or local agen-
8 cy responsible for child welfare services under sub-
9 titles B and E of title IV of the Social Security Act
10 (42 U.S.C. 601 et seq.).

11 (4) COOPERATING ENTITY.—The term “cooper-
12 ating entity” means a State or local entity acting
13 under agreement with the Secretary.

14 (5) DETENTION FACILITY.—The term “deten-
15 tion facility” means a Federal, State, or local gov-
16 ernment facility, or a privately owned and operated
17 facility, that is used, in whole or in part, to hold in-
18 dividuals under the authority of the Director of U.S.
19 Immigration and Customs Enforcement, including
20 facilities that hold such individuals under a contract
21 or agreement with the Director.

22 (6) IMMIGRATION ENFORCEMENT ACTION.—The
23 term “immigration enforcement action” means the
24 apprehension of 1 or more individuals whom the De-
25 partment has reason to believe are removable from

1 the United States by the Secretary or a cooperating
2 entity.

3 (7) PARENT.—The term “parent” means a bio-
4 logical or adoptive parent of a child, whose parental
5 rights have not been relinquished or terminated
6 under State law or the law of a foreign country, or
7 a legal guardian under State law or the law of a for-
8 eign country.

9 **SEC. 3803. APPREHENSION PROCEDURES FOR IMMIGRA-**
10 **TION ENFORCEMENT-RELATED ACTIVITIES.**

11 (a) APPREHENSION PROCEDURES.—In any immigra-
12 tion enforcement action, the Secretary and cooperating en-
13 tities shall—

14 (1) as soon as possible, but generally not later
15 than 2 hours after an immigration enforcement ac-
16 tion, inquire whether an individual is a parent or
17 primary caregiver of a child in the United States
18 and provide any such individuals with—

19 (A) the opportunity to make a minimum of
20 2 telephone calls to arrange for the care of such
21 child in the individual’s absence; and

22 (B) contact information for—

23 (i) child welfare agencies and family
24 courts in the same jurisdiction as the child;
25 and

1 (ii) consulates, attorneys, and legal
2 service providers capable of providing free
3 legal advice or representation regarding
4 child welfare, child custody determinations,
5 and immigration matters;

6 (2) notify the child welfare agency with jurisdic-
7 tion over the child if the child's parent or primary
8 caregiver is unable to make care arrangements for
9 the child or if the child is in imminent risk of seri-
10 ous harm;

11 (3) ensure that personnel of the Department
12 and cooperating entities do not, absent medical ne-
13 cessity or extraordinary circumstances, compel or re-
14 quest children to interpret or translate for interviews
15 of their parents or of other individuals who are en-
16 countered as part of an immigration enforcement ac-
17 tion; and

18 (4) ensure that any parent or primary caregiver
19 of a child in the United States—

20 (A) absent medical necessity or extraor-
21 dinary circumstances, is not transferred from
22 his or her area of apprehension until the indi-
23 vidual—

24 (i) has made arrangements for the
25 care of such child; or

1 (ii) if such arrangements are unavail-
2 able or the individual is unable to make
3 such arrangements, is informed of the care
4 arrangements made for the child and of a
5 means to maintain communication with the
6 child;

7 (B) absent medical necessity or extraor-
8 dinary circumstances, and to the extent prac-
9 ticable, is placed in a detention facility either—

10 (i) proximate to the location of appre-
11 hension; or

12 (ii) proximate to the individual's ha-
13 bitual place of residence; and

14 (C) receives due consideration of the best
15 interests of such child in any decision or action
16 relating to his or her detention, release, or
17 transfer between detention facilities.

18 (b) REQUESTS TO LOCAL AND STATE ENTITIES.—

19 If the Secretary requests a State or local entity to hold
20 in custody an individual who the Department has reason
21 to believe is removable pending transfer of that individual
22 to the custody of the Secretary or to a detention facility,
23 the Secretary shall also request that the State or local en-
24 tity provide the individual the protections specified in
25 paragraphs (1) and (2) of subsection (a), if that individual

1 is found to be the parent or primary caregiver of a child
2 in the United States.

3 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
4 SERVED.—The provisions of this section shall not be con-
5 strued to impede, delay, or in any way limit the obligations
6 of the Secretary, the Attorney General, or the Secretary
7 of Health and Human Services under section 235 of the
8 William Wilberforce Trafficking Victims Protection Reau-
9 thorization Act of 2008 (8 U.S.C. 1232) or section 462
10 of the Homeland Security Act of 2002 (6 U.S.C. 279).

11 **SEC. 3804. ACCESS TO CHILDREN, STATE AND LOCAL**
12 **COURTS, CHILD WELFARE AGENCIES, AND**
13 **CONSULAR OFFICIALS.**

14 At all detention facilities, the Secretary shall—

15 (1) prominently post in a manner accessible to
16 detainees and visitors and include in detainee hand-
17 books information on the protections of this subtitle
18 as well as information on potential eligibility for pa-
19 role or release;

20 (2) absent extraordinary circumstances, ensure
21 that individuals who are detained by the Department
22 and are parents of children in the United States
23 are—

24 (A) permitted regular phone calls and con-
25 tact visits with their children;

1 (B) provided with contact information for
2 child welfare agencies and family courts in the
3 relevant jurisdictions;

4 (C) able to participate fully, and to the ex-
5 tent possible in-person, in all family court pro-
6 ceedings and any other proceedings that may
7 impact their right to custody of their children;

8 (D) granted free and confidential telephone
9 calls to relevant child welfare agencies and fam-
10 ily courts as often as is necessary to ensure
11 that the best interest of their children, includ-
12 ing a preference for family unity whenever ap-
13 propriate, can be considered in child welfare
14 agency or family court proceedings;

15 (E) able to fully comply with all family
16 court or child welfare agency orders impacting
17 custody of their children;

18 (F) provided access to United States pass-
19 port applications or other relevant travel docu-
20 ment applications for the purpose of obtaining
21 travel documents for their children;

22 (G) afforded timely access to a notary pub-
23 lic for the purpose of applying for a passport
24 for their children or executing guardianship or

1 other agreements to ensure the safety of their
2 children; and

3 (H) granted adequate time before removal
4 to obtain passports, apostilled birth certificates,
5 travel documents, and other necessary records
6 on behalf of their children if such children will
7 accompany them on their return to their coun-
8 try of origin or join them in their country of or-
9 igin; and

10 (3) where doing so would not impact public
11 safety or national security, facilitate the ability of
12 detained alien parents and primary caregivers to
13 share information regarding travel arrangements
14 with their consulate, children, child welfare agencies,
15 or other caregivers in advance of the detained alien
16 individual's departure from the United States.

17 **SEC. 3805. MANDATORY TRAINING.**

18 The Secretary, in consultation with the Secretary of
19 Health and Human Services, the Secretary of State, the
20 Attorney General, and independent child welfare and fam-
21 ily law experts, shall develop and provide training on the
22 protections required under sections 3803 and 3804 to all
23 personnel of the Department, cooperating entities, and de-
24 tention facilities operated by or under agreement with the
25 Department who regularly engage in immigration enforce-

1 ment actions and in the course of such actions come into
2 contact with individuals who are parents or primary care-
3 givers of children in the United States.

4 **SEC. 3806. RULEMAKING.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Secretary shall promulgate regula-
7 tions to implement sections 3803 and 3804 of this Act.

8 **SEC. 3807. SEVERABILITY.**

9 If any provision of this subtitle or amendment made
10 by this subtitle, or the application of a provision or amend-
11 ment to any person or circumstance, is held to be uncon-
12 stitutional, the remainder of this subtitle and amendments
13 made by this subtitle, and the application of the provisions
14 and amendment to any person or circumstance, shall not
15 be affected by the holding.