

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide health and safety protections for detained children.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, 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 _____

Viz:

1 At the end, add the following:

2 **SEC. 7. HEALTH AND SAFETY PROTECTIONS FOR DETAINED**

3 **CHILDREN.**

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE COMMITTEES OF CON-
6 GRESS.—The term “appropriate committees of Con-
7 gress” means—

8 (A) the Committee on Appropriations, the
9 Committee on Homeland Security and Govern-
10 mental Affairs, the Committee on Health, Edu-

1 cation, Labor, and Pensions, and the Com-
2 mittee on the Judiciary of the Senate; and

3 (B) the Committee on Appropriations, the
4 Committee on Homeland Security, the Com-
5 mittee on Education and Labor, and the Com-
6 mittee on the Judiciary of the House of Rep-
7 resentatives.

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

10 (A) has not attained 18 years of age; and

11 (B) does not have permanent immigration
12 status in the United States.

13 (3) DETAINED INDIVIDUAL.—The term “de-
14 tained individual” means any individual, including
15 an unaccompanied alien child, held in immigration
16 detention under the Immigration and Nationality
17 Act (8 U.S.C. 1101 et seq.).

18 (4) INFLUX.—The term “influx” means a pe-
19 riod during which—

20 (A) not less than 95 percent of the avail-
21 able beds in permanent shelters for unaccom-
22 panied alien children are occupied; and

23 (B) the average length of care for unac-
24 companied alien children in custody of the Sec-

1 retary of Health and Human Services exceeds
2 35 days.

3 (5) INFLUX CARE FACILITY.—The term “influx
4 care facility” means an Office of Refugee Resettle-
5 ment facility that is operated to provide temporary
6 emergency shelter and services for unaccompanied
7 alien children during an influx or emergency.

8 (6) OFFICE OF REFUGEE RESETTLEMENT FA-
9 CILITY.—The term “Office of Refugee Resettlement
10 facility” means any facility at which unaccompanied
11 alien children are in the care and custody of the Sec-
12 retary of Health and Human Services.

13 (7) STANDARD CARE FACILITY.—The term
14 “standard care facility” means an Office of Refugee
15 Resettlement facility—

16 (A) that provides residential care for unac-
17 companied alien children; and

18 (B) at which all programmatic components
19 are administered onsite and in the least restric-
20 tive environment.

21 (8) UNACCOMPANIED ALIEN CHILD.—The term
22 “unaccompanied alien child” has the meaning given
23 the term in section 462(g) of the Homeland Security
24 Act of 2002 (6 U.S.C. 279(g)).

25 (b) FLORES SETTLEMENT AGREEMENT.—

1 (1) IN GENERAL.—A family unit may be de-
2 tained only in accordance with the holding in Flores
3 v. Sessions et al. (9th Cir. July 5, 2017; C.D. CA;
4 July 24, 2015) and the stipulated settlement agree-
5 ment as filed in the United States District Court for
6 the Central District of California on January 17,
7 1997 (CV 85 4544 RJK), including all subsequent
8 court decisions and interpretations (referred to in
9 this subsection as the “Flores settlement agree-
10 ment”).

11 (2) RULEMAKING.—Any regulation proposed or
12 promulgated to supersede the Flores settlement
13 agreement shall have no force or effect.

14 (3) RULE OF CONSTRUCTION.—Nothing in this
15 section may be construed—

16 (A) to affect the application of the Flores
17 settlement agreement to unaccompanied alien
18 children; or

19 (B) to abrogate the Flores settlement
20 agreement.

21 (4) REVIEW OF DETENTION DETERMINA-
22 TIONS.—The review of any determination by the
23 Secretary of Homeland Security to detain an indi-
24 vidual or a family unit under this subsection shall be
25 in accordance with all other provisions of law, hold-

1 ings (including any holding made in *Flores v. Ses-*
2 sions et al. (9th Cir. July 5, 2017; C.D. CA; July
3 24, 2015)), consent decrees, and settlement agree-
4 ments (including the Flores settlement agreement).

5 (c) PROMPT MEDICAL ASSESSMENTS FOR DETAINED
6 CHILDREN.—

7 (1) BODY TEMPERATURE CHECK ON INTAKE.—

8 With respect to a child in the custody of the Sec-
9 retary of Homeland Security, not later than one
10 hour after the time at which the initial intake of
11 such child is completed, the Secretary of Homeland
12 Security shall ensure that the child receives a body
13 temperature check.

14 (2) MEDICAL EVALUATION BY MEDICAL PRO-
15 FESSIONAL WITH PEDIATRIC TRAINING.—Not later
16 than 48 hours after the time at which a child is
17 taken into the custody of the Secretary of Homeland
18 Security, the Secretary shall ensure that the child
19 receives a medical evaluation by a medical profes-
20 sional with specialized pediatric training—

21 (A) to determine whether the child has any
22 health or safety concerns; and

23 (B) that includes a measurement of all
24 vital signs and a body temperature check.

1 (3) SPECIALIZED TRAINING FOR PUBLIC
2 HEALTH SERVICE COMMISSIONED CORPS.—The Sec-
3 retary of Homeland Security shall enter into a
4 memorandum of understanding with the Public
5 Health Service Commissioned Corps and the Sec-
6 retary of Health and Human Services to provide
7 specialized training relating to migration for the
8 Public Health Service Commissioned Corps to sup-
9 port deployment at Office of Refugee Resettlement
10 facilities and U.S. Customs and Border Protection
11 facilities during any period in which high numbers
12 of unaccompanied alien children and families arrive
13 at the Southern border.

14 (d) DETENTION STANDARDS FOR U.S. CUSTOMS AND
15 BORDER PROTECTION FACILITIES.—With respect to any
16 U.S. Customs and Border Protection facility, the Sec-
17 retary of Homeland Security shall ensure that—

18 (1) the facility—

19 (A) complies with the standards of the
20 U.S. Customs and Border Protection entitled
21 “National Standards on Transport, Escort, De-
22 tention, and Search” issued in October 2015;

23 (B) remains at an appropriate tempera-
24 ture;

25 (C) is properly ventilated;

1 (D) has adequate supervision and other
2 safeguards to protect detained children from
3 other detained individuals; and

4 (E) has a child welfare specialist on staff,
5 or has prompt access to a child welfare spe-
6 cialist;

7 (2) each detained individual is provided—

8 (A) not fewer than three healthy and nu-
9 tritious meals daily, in accordance with the
10 most recent dietary guidelines of the Depart-
11 ment of Agriculture, that—

12 (i) in the case of an adult who is not
13 pregnant or breastfeeding, provide a total
14 of not fewer than 2,000 calories; or

15 (ii) in the case of a detained child or
16 an individual who is pregnant or
17 breastfeeding, meet, as applicable—

18 (I) the nutrition standards for
19 the school lunch program authorized
20 under the Richard B. Russell National
21 School Lunch Act (42 U.S.C. 1751 et
22 seq.) and the school breakfast pro-
23 gram established by section 4 of the
24 Child Nutrition Act of 1966 (42
25 U.S.C. 1773); or

1 (II) the nutrition standards es-
2 tablished under the special supple-
3 mental nutrition program for women,
4 infants, and children established by
5 section 17 of the Child Nutrition Act
6 of 1966 (42 U.S.C. 1786);

7 (B) not less than 1 gallon of clean drink-
8 ing water daily, including age-appropriate liq-
9 uids;

10 (C) regular access to hygiene products, in-
11 cluding—

12 (i) soap;

13 (ii) a toothbrush and toothpaste;

14 (iii) not fewer than one full change of
15 clothing;

16 (iv) a towel;

17 (v) toilet paper;

18 (vi) feminine hygiene products, as ap-
19 plicable;

20 (vii) prenatal vitamins, as applicable;

21 and

22 (viii) diaper changing materials, as
23 applicable, including—

24 (I) a clean diaper changing sta-
25 tion;

1 (II) diapers in the appropriate
2 size;

3 (III) diaper rash ointment;

4 (IV) baby wipes; and

5 (V) diaper disposal receptacles;

6 (D) regular access to showers, sinks, and
7 toilets; and

8 (E) an opportunity to contact any family
9 member with whom the detained individual was
10 apprehended; and

11 (3) in the case of a detained individual the pre-
12 scription medication of whom is confiscated on ap-
13 prehension, not later than six hours after the time
14 at which the detained individual arrives at a U.S.
15 Customs and Border Protection facility, a medical
16 professional, or in the case of a child, a medical pro-
17 fessional with pediatric training reviews such confis-
18 cation and makes a determination whether the medi-
19 cation shall be—

20 (A) kept by the detained individual in his
21 or her possession for regular use during deten-
22 tion;

23 (B) properly stored by U.S. Customs and
24 Border Protection officials, with appropriate ac-

1 cess for regular use by the detained individual
2 during detention; or

3 (C) stored with the personal property of
4 the detained individual.

5 (e) DETENTION STANDARDS FOR U.S. IMMIGRATION
6 AND CUSTOMS ENFORCEMENT.—The Secretary of Home-
7 land Security shall ensure the full compliance of each U.S.
8 Immigration and Customs Enforcement detention system
9 facility, including each contract facility and each local or
10 county jail operating under an intergovernmental service
11 agreement, with, at a minimum, the standards of U.S. Im-
12 migration and Customs Enforcement entitled “Perform-
13 ance-Based National Detention Standards 2011”, as re-
14 vised in December 2016.

15 (f) CARE AND CUSTODY STANDARDS FOR OFFICE OF
16 REFUGEE RESETTLEMENT FACILITIES.—

17 (1) NEW CONTRACTS.—On the maturation of
18 any existing contract to house unaccompanied alien
19 children, the Secretary of Health and Human Serv-
20 ices may only offer to extend or enter into a new
21 contract or cooperative agreement for the housing of
22 unaccompanied alien children with one or more non-
23 profit entities that are—

24 (A) licensed by the applicable State; and

1 (B) in compliance with Exhibit 1 of the
2 Flores settlement agreement, regardless of the
3 status of the underlying Flores settlement
4 agreement.

5 (2) PRIORITIZATION OF SMALL FACILITIES.—
6 The Secretary of Health and Human Services shall
7 prioritize the use of standard care facilities and in-
8 flux care facilities that house not more than 100 un-
9 accompanied alien children.

10 (3) LIMITATIONS ON USE OF INFLUX CARE FA-
11 CILITIES.—

12 (A) LENGTH OF CARE EXCEEDING 35
13 DAYS.—

14 (i) IN GENERAL.—In the case of an
15 influx, the Secretary of Health and Human
16 Services may not house one or more unac-
17 companied alien children in an influx care
18 facility for more than 30 days.

19 (ii) DAILY REPORTS.—

20 (I) IN GENERAL.—Not less fre-
21 quently than daily during an influx in
22 which one or more unaccompanied
23 alien children are housed in an influx
24 care facility, the Secretary of Health
25 and Human Services shall submit to

1 the appropriate committees of Con-
2 gress a daily report on efforts to re-
3 duce the average length of care of un-
4 accompanied alien children in the cus-
5 tody of the Secretary of Health and
6 Human Services.

7 (II) MATTERS TO BE IN-
8 CLUDED.—Each report under sub-
9 clause (I) shall include the following:

10 (aa) A detailed description
11 of any proposed—

12 (AA) policy with re-
13 spect to the care of unac-
14 companied alien children;
15 and

16 (BB) staffing increase
17 at an influx care facility.

18 (bb) With respect to the in-
19 flux, the mean and median num-
20 ber of days between—

21 (AA) the date on which
22 a family reunification appli-
23 cation is submitted for an
24 unaccompanied alien child;
25 and

1 (BB) the date on which
2 the Secretary of Health and
3 Human Services issues a de-
4 cision on such application.

5 (cc) The total number of
6 such applications granted.

7 (dd) The total number of
8 such applications denied.

9 (ee) A description of any ac-
10 tion considered but not taken
11 with respect to the care and cus-
12 tody of unaccompanied alien chil-
13 dren as a result of a conflict with
14 Federal or State law.

15 (B) TRANSFER.—The Secretary of Health
16 and Human Services may transfer an unaccom-
17 panied alien child from a State-licensed stand-
18 ard care facility to an influx care facility solely
19 for the purpose of—

20 (i) family reunification; or

21 (ii) placement with a sponsor that
22 shall occur not later than 14 days after the
23 date on which the unaccompanied alien
24 child is transferred.