

Protecting Unaccompanied Children Act Section-by-Section

Section 1. Short Title

Provides the short title of the bill, the “Protecting Unaccompanied Children Act.”

Section 2. Table of Contents

Provides a table of contents.

TITLE I—STREAMLINING REPORTING OF VIOLATIONS AGAINST IMMIGRANT CHILDREN IN FEDERAL CUSTODY

Section 101. Definitions

Defines key terms used in this title.

Section 102. Office of the Ombudsperson for Immigrant Children in Federal Custody

Establishes an independent Office of the Ombudsperson for Immigrant Children in Federal Custody within the Department of Health and Human Services (HHS). The Office would be headed by an Ombudsperson who would be appointed by, and report directly to, the Secretary of HHS.

The Ombudsperson would—

- provide child-welfare focused recommendations to the Secretary and the Office of Refugee Resettlement (ORR) regarding the care of unaccompanied noncitizen children, as well as all children in Department of Homeland Security (DHS) custody;
- monitor compliance with all applicable laws and standards relating to unaccompanied children in federal custody and investigate any potential violations of such laws and standards; and
- be required to create a streamlined process for reporting and investigating abuses, which would include the ability for whistleblowers (including grantees and contractors) to report concerns with HHS policies and practices and be required to conduct a review of this process every two years.

Finally, both HHS and DHS would be required to facilitate access to necessary documents and facilities, and the Ombudsperson would be required to notify either the Secretaries of those agencies or Congress in the event of an unreasonable refusal to provide the Ombudsperson such access.

Section 103. Data Collection

Requires the Director of ORR to develop a data collection system with census and demographic information regarding noncitizen children in ORR custody to be provided monthly to the new

Ombudsperson.

Section 104. Expert Advisory Committee

Requires the Ombudsperson to establish an expert advisory committee to meet quarterly to identify relevant trends relating to immigrant children in government custody, conduct fact-finding missions and investigations of facilities, and ensure government and private contractor compliance with applicable law and standards for facilities.

The committee members would be appointed by the Ombudsperson, represent various geographical regions, and be comprised of subject matter experts in child and family welfare, immigration, human rights, pediatric medical and mental health, social work, data analysis, and other relevant topics.

Section 105. Coordination with Department of Homeland Security

Requires a memorandum of understanding between the Secretary of Homeland Security and the Ombudsperson regarding the sharing of information with the Ombudsperson about noncitizen children detained in DHS custody, including by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement. This section also establishes a federal interagency working group to identify and discuss concerns relating to immigrant children in facilities.

Section 106. Rule of Construction

Nothing in the title shall be construed to preclude or limit Flores settlement agreement class counsel from conducting independent investigations or seeking enforcement actions relating to violations of the Flores settlement agreement in any appropriate district court of the United States.

TITLE II—PROTECTIONS FOR IMMIGRANT CHILDREN

Subtitle A—Unaccompanied Alien Children in Immigration Proceedings

Section 201. Legal Representation in Removal Proceedings

Representation for Kids. Requires an unaccompanied child in removal proceedings to be represented by counsel paid for and appointed by the government at every stage of such proceedings, unless the child has obtained counsel at their own expense. It also requires such child or their counsel to be provided with their immigration files (also known as A-files).

Model Guidelines. Requires HHS to develop model guidelines for representing noncitizen children in immigration proceedings in consultation with the Department of Justice (DOJ).

Specialized Dockets. Requires DOJ to establish and maintain specialized children's dockets.

Section 202. Motions to Reopen

Creates protections from removal for unrepresented children. If HHS fails to provide counsel to an unaccompanied child, the deadline for filing a motion to reopen a proceeding shall not apply, and the filing of such a motion shall stay the child's removal from the United States.

Subtitle B—Access to Services

Section 211. Clarification of Unaccompanied Child Determination Procedures

Clarification of Eligibility. Clarifies current law to ensure that unaccompanied children, such as Afghan nationals paroled into the United States, are eligible for appropriate ORR services regardless of whether they are or have ever been in federal custody.

Improving Processes for Children from Contiguous Countries. Requires USCIS asylum officers to conduct screenings of Mexican and Canadian children. This change would ensure that such children are only repatriated if they do not have a credible fear of persecution, are not at risk of becoming a victim of trafficking, and are able to make an independent decision to withdraw their application from admission to the United States. Such screenings are currently conducted in practice by U.S. Customs and Border Protection (CBP), although in statute this responsibility is only designated to the Secretary of Homeland Security. This section also requires a report to Congress, drafted in consultation with HHS and child welfare advocates, on the efficacy of current laws and regulations that protect child victims of trafficking and children fleeing persecution.

Section 212. Improving Access to Post-Release Services

Post Release Services. Requires certain vulnerable unaccompanied children released from ORR custody to receive at least one in-person home visit to determine the child's well-being and assess the safety and suitability of the home in which the child was placed, and permits other sponsors to receive such services. Additional post-release services would be required for children newly identified as being victims of trafficking, a special needs child with a disability, victims of physical or sexual abuse, or sponsors with clear risks of abuse, maltreatment, or exploitation.

Expanding Definition of Vulnerable Children. Requires a child to receive services if the home visit result in new information indicating that a child has been or is at risk of trafficking; is a special needs child with a disability; has been or is at risk of physical or sexual abuse; or whose sponsor clearly presents a risk of abuse, maltreatment, exploitation, neglect, or labor exploitation.

Section 213. State-Level Coordinators for Unaccompanied Children's Services

Creates state-level coordinators to raise awareness with local stakeholders regarding the vulnerabilities of unaccompanied children. The coordinators would also work with local stakeholders to meet their needs, increase their access to services, and ensure that local institutions serving children have information regarding child labor laws, local minimum wage

requirements, and mechanisms for reporting labor violations in a language accessible to such children.

The state level coordinators would be funded by HHS and located within a state's social services office, analogous to ORR's current state refugee coordinators. Similar to state refugee coordinators, they would be appointed by the state or, if a state chooses not to appoint such a coordinator, ORR may allocate this role to a non-governmental organization.

Section 214. Assistance for Children and Families Separated Under Zero Tolerance

Authorizes benefits for separated families equivalent to those provided to refugees, including medical and mental health care, as well as Medicaid, Supplemental Nutrition Assistance Program benefits, and Supplemental Security Income. More than 5,500 families were separated at the southern border under the Trump Administration's Zero Tolerance policy. While families separated under Zero Tolerance have been able to re-enter the United States to pursue reunification, a lack of access to medical and mental health care have made reunification challenging for many and even prohibitive for some. Making this small number of families eligible for public assistance to the same extent as refugees would recognize the trauma these parents and children faced under a cruel, ineffective U.S. immigration policy and remove barriers to their reunification and healing.

Subtitle C—Facilities Housing Unaccompanied Alien Children

Section 221. Technical Assistance for Community-Based Care Providers

Encouraging Small-Scale Community Based Settings. Amends the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to add a presumption that “the least restrictive setting” in a child's best interest is a placement that most approximates a family and meets a child's special needs. Requires that children shall be placed in the following order of preference: family-based foster care, group home foster care, and small-scale shelters.

Technical Assistance to Small-Scale Applicants. Requires HHS to provide technical assistance to potential applicants for ORR's care provider network who can provide small-scale community-based settings, such as shelters, transitional foster care, small group homes, or long-term foster care.

Detailed Transition Plan. Requires HHS to develop a report detailing a plan for an ORR transition to 100 percent of its bed census in small-scale facilities, to be delivered to Congress within a year of enactment of the Act. In developing this report, ORR would be directed to consult with current small-scale providers and other organizations with expertise in child development, child welfare, and serving individuals with disabilities. The report should include the necessary budget and timeline for such a transition and should detail barriers in the Administration for Children and Families and ORR contracting and granting practices, staffing limitations, availability, outreach, recruitment of potential providers, other identified barriers to making the transition, and recommendations to address those barriers.

Section 222. Standards and Compliance

Codifies existing ORR policy on background checks for staff with access to unaccompanied children.

Subtitle D—Child Welfare at the Border and Prevention of Family Separation

Section 231. Child Welfare Training at the Border

Requires all CBP personnel who have contact with children to undergo training in applicable legal authorities, policies, practices, and procedures relating to noncitizen children they encounter, including child development, trauma, the manner in which trauma affects the health and behavior of children, and identifying and responding to common signs and symptoms of medical distress in children.

Section 232. Preventing Family Separation of Unaccompanied Children.

Requires qualified ORR staff to be co-located at, or detailed to, DHS-designated locations within CBP facilities to review, consider, and, if appropriate, approve the safe release of an unaccompanied child to an adult relative or caregiver, who is not their parent or legal guardian, with whom they traveled to the United States, utilizing the same processes currently in place for releasing an unaccompanied child to a sponsor in the United States.

Requires CBP to provide appropriate space at such facilities and include documentation of potential non-parent close relative sponsors (currently known as “Category 2” sponsors) in the referral of the unaccompanied children to ORR. Ensures that children approved for such release are considered “unaccompanied” throughout their immigration proceedings, so long as they are not in the custody of a parent or legal guardian, as is currently required under the TVPRA.

TITLE III—ENSURING SAFE RELEASE TO SPONSORS

Section 301. Ensuring Safe Release to Sponsors Who Are Not Parents or Legal Guardians

Requires ORR to develop uniform procedures for verification of identity, relationship, and address for all sponsors to ensure nationwide consistency. This section also would require all sponsors, other biological parents or legal guardians, and their adult household members to undergo criminal background and public records checks. The information collected would be prohibited from disclosure to DHS for immigration enforcement purposes.

Section 302. Expansion and Evaluation of Home Studies

Requires pre-release home studies for unaccompanied children considered for reunification with sponsors who are distant relatives or unrelated (known as “Category 3”), in which verification of relationship cannot be clearly demonstrated.

Requires ORR to create and follow objective, publicly available criteria for releasing a child following a negative home study recommendation as well as maintain certain professional and educational requirements for staff who conduct home studies.

For all children who receive home studies, this section would prohibit ORR from requiring that the home study take place sooner than 15 calendar days from the time it is requested by a provider such as a grantee or contractor.

Requires ORR to report on the effectiveness of home studies and how they do or do not identify safety concerns. Such a report would include how often a sponsor release request is denied after a home study is conducted.

Section 303. Requirements for Child and Sponsor Case Management System

Searchable Electronic Case Management. Codifies improvements for ORR’s electronic case management system to better track safety concerns with potential sponsors and incorporate that information into decisions into sponsor release decisions and post-release services. This section also would require the system to include searchable information—

- regarding specific vulnerabilities of unaccompanied children while in ORR care and custody, including whether the child is a priority for post-release services; and
- safety concerns, including human trafficking, identified for a specific sponsor or a specific household address in order to identify concerns for releasing subsequent children to the same sponsor or address.

The case management system would also be required to have a mechanism to identify names, addresses, and geographic areas (such as neighborhoods) with previously identified safety concerns. ORR and providers who perform work on ORR’s behalf as grantees or contractors would be required to verify records when the portal detects a potential duplicate.

Prohibitions on Information Sharing for Purposes of Immigration Enforcement. Prohibits the inclusion of immigration status information about any adult member of a sponsor’s household and disclosure of information within the system to the Department of Homeland Security for the purpose of immigration enforcement, along with other privacy protections.

TITLE IV—PROTECTIONS AND ACCESS TO CERTAIN SERVICES FOR SPECIAL IMMIGRANT JUVENILES AND OTHER VULNERABLE IMMIGRANTS

Section 401. Eliminating Annual Employment-Based Visa Caps for Special Immigrant Juveniles

Removes Special Immigrant Juveniles (SIJs), who have such immigration status due to abuse, abandonment, or neglect by a parent or guardian, from annual employment-based visa caps. Despite its humanitarian nature, the pathway to a green card for children granted SIJ status runs through the employment-based immigration visa system—subjecting SIJ recipients to annual worldwide and country-specific visa limits. This has resulted in thousands of vulnerable children

and youth in backlogs that mean they must wait years for a visa to become available prior to being eligible to apply for lawful permanent residence.

Section 402. Elimination of Annual Numerical Limitation on U Visas

Removes the current annual numerical limitation on the number of individuals who may be provided U nonimmigrant status (“U visas” for victims of serious crimes who collaborate with law enforcement).

Section 403. Access to Medicaid for Certain Children Granted Status

Makes SIJs, children granted U visas, and DACA-eligible noncitizens eligible for federal public assistance to the same extent as refugees and victims of severe forms of trafficking in persons (“T visas”). Despite their recognition as vulnerable immigrants granted legal status, certain children granted humanitarian protection are not eligible for certain forms of federal public assistance. Specifically, SIJs and children granted U visas are currently subject to the same five-year bar against receiving Medicaid and other forms of federal public assistance as other legal immigrants; however, children granted refugee status or “T visas” as trafficking victims are not subject to this bar.

TITLE V—STOPPING CHILD LABOR TRAFFICKING

Section 501. Victims of Serious Labor and Employment Violations or Crime

Expands eligibility for U visas for workers, including children, who have suffered or been witnesses of serious labor violations; who cooperate with local, state, or federal worker protection agencies; and who have suffered substantial abuse or harm related to the workplace claim or would face extreme hardship upon removal.

Section 502. Labor Enforcement Actions

Mandates that when DHS conducts a worksite enforcement action, and (1) there is a labor dispute in progress, or (2) the agency received information as a means to retaliate against workers for enforcing their labor rights, DHS ensures that workers arrested or detained are not deported before the appropriate labor agency is notified and has a chance to interview the workers.

Provides grounds for a stay of removal in immigration proceedings for three years with employment authorization if workers are pursuing a workplace claim in a local, state, or federal worker protection agency or court. To be eligible for the stay, the workers must agree to work with the government to pursue labor claims against their employer.

Allows federal, state or local law enforcement officials, labor officials, and worker protection agencies to ask DHS to provide temporary lawful status with employment authorization to workers who have filed a workplace claim or are material witnesses in any pending or anticipated workplace claim.

TITLE VI—GENERAL PROVISION

Section 601. Authorization of Appropriations

Authorizes to be appropriated such sums as are necessary to carry out this Act and the amendments made by this Act. Creates a contingency fund for ORR with triggers of a minimum level of funding for a certain number of children in the event of large, unanticipated influxes of children. As the size of this population is unpredictable, ORR's budget and ability to provide a robust spectrum of services faces ongoing uncertainty. This would ensure that ORR can rely on baseline funds to provide basic shelter and care and focus additional resources towards expanding legal and post-release services for a greater number of children.