

108TH CONGRESS
2^D SESSION

S. 1129

AN ACT

To provide for the protection of unaccompanied alien children, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Unaccompanied Alien Child Protection Act of 2004”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND
DETENTION**

Sec. 101. Procedures when encountering unaccompanied alien children.

Sec. 102. Family reunification for unaccompanied alien children with relatives
in the United States.

Sec. 103. Appropriate conditions for detention of unaccompanied alien children.

Sec. 104. Repatriated unaccompanied alien children.

Sec. 105. Establishing the age of an unaccompanied alien child.

Sec. 106. Effective date.

**TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO
GUARDIANS AD LITEM AND COUNSEL**

Sec. 201. Guardians ad litem.

Sec. 202. Counsel.

Sec. 203. Effective date; applicability.

**TITLE III—STRENGTHENING POLICIES FOR PERMANENT
PROTECTION OF ALIEN CHILDREN**

Sec. 301. Special immigrant juvenile visa.

Sec. 302. Training for officials and certain private parties who come into con-
tact with unaccompanied alien children.

Sec. 303. Report.

Sec. 304. Effective date.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children’s asylum claims.

Sec. 402. Unaccompanied refugee children.

Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-
like circumstances.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF
2002**

Sec. 601. Additional responsibilities and powers of the Office of Refugee Reset-
tlement with respect to unaccompanied alien children.

Sec. 602. Technical corrections.

Sec. 603. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act:

3 (1) COMPETENT.—The term “competent”, in
4 reference to counsel, means an attorney who com-
5 plies with the duties set forth in this Act and—

6 (A) is a member in good standing of the
7 bar of the highest court of any State, posses-
8 sion, territory, Commonwealth, or the District
9 of Columbia;

10 (B) is not under any order of any court
11 suspending, enjoining, restraining, disbaring,
12 or otherwise restricting the attorney in the
13 practice of law; and

14 (C) is properly qualified to handle matters
15 involving unaccompanied immigrant children or
16 is working under the auspices of a qualified
17 nonprofit organization that is experienced in
18 handling such matters.

19 (2) DIRECTOR.—The term “Director” means
20 the Director of the Office.

21 (3) DIRECTORATE.—The term “Directorate”
22 means the Directorate of Border and Transportation
23 Security established by section 401 of the Homeland
24 Security Act of 2002 (6 U.S.C. 201).

1 (4) OFFICE.—The term “Office” means the Of-
2 fice of Refugee Resettlement as established by sec-
3 tion 411 of the Immigration and Nationality Act (8
4 U.S.C. 1521).

5 (5) SECRETARY.—The term “Secretary” means
6 the Secretary of Homeland Security.

7 (6) UNACCOMPANIED ALIEN CHILD.—The term
8 “unaccompanied alien child” has the same meaning
9 as is given the term in section 462(g)(2) of the
10 Homeland Security Act of 2002 (6 U.S.C.
11 279(g)(2)).

12 (7) VOLUNTARY AGENCY.—The term “vol-
13 untary agency” means a private, nonprofit voluntary
14 agency with expertise in meeting the cultural, devel-
15 opmental, or psychological needs of unaccompanied
16 alien children, as certified by the Director of the Of-
17 fice of Refugee Resettlement.

18 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
19 TIONALITY ACT.—Section 101(a) of the Immigration and
20 Nationality Act (8 U.S.C. 1101(a)) is amended by adding
21 at the end the following:

22 “(51) The term ‘unaccompanied alien child’ means
23 a child who—

24 “(A) has no lawful immigration status in the
25 United States;

1 “(B) has not attained the age of 18; and

2 “(C) with respect to whom—

3 “(i) there is no parent or legal guardian in
4 the United States; or

5 “(ii) no parent or legal guardian in the
6 United States is able to provide care and phys-
7 ical custody.

8 “(52) The term ‘unaccompanied refugee children’
9 means persons described in paragraph (42) who—

10 “(A) have not attained the age of 18; and

11 “(B) with respect to whom there are no parents
12 or legal guardians available to provide care and
13 physical custody.”.

14 (c) RULE OF CONSTRUCTION.—A department or
15 agency of a State, or an individual or entity appointed by
16 a State court or juvenile court located in the United
17 States, acting in loco parentis, shall not be considered a
18 legal guardian for purposes of section 462 of the Home-
19 land Security Act of 2002 (6 U.S.C. 279) or this Act.

1 **TITLE I—CUSTODY, RELEASE,**
2 **FAMILY REUNIFICATION, AND**
3 **DETENTION**

4 **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-**
5 **PANIED ALIEN CHILDREN.**

6 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE
7 UNITED STATES BORDER OR AT UNITED STATES PORTS
8 OF ENTRY.—

9 (1) IN GENERAL.—Subject to paragraph (2), if
10 an immigration officer finds an unaccompanied alien
11 child who is described in paragraph (2) at a land
12 border or port of entry of the United States and de-
13 termines that such child is inadmissible under the
14 Immigration and Nationality Act (8 U.S.C. 1101 et
15 seq.), the officer shall—

16 (A) permit such child to withdraw the
17 child's application for admission pursuant to
18 section 235(a)(4) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1225(a)(4)); and

20 (B) return such child to the child's country
21 of nationality or country of last habitual resi-
22 dence.

23 (2) SPECIAL RULE FOR CONTIGUOUS COUN-
24 TRIES.—

1 (A) IN GENERAL.—Any child who is a na-
2 tional or habitual resident of a country that is
3 contiguous with the United States and that has
4 an agreement in writing with the United States
5 providing for the safe return and orderly repa-
6 triation of unaccompanied alien children who
7 are nationals or habitual residents of such
8 country shall be treated in accordance with
9 paragraph (1), if a determination is made on a
10 case-by-case basis that—

11 (i) such child is a national or habitual
12 resident of a country described in subpara-
13 graph (A);

14 (ii) such child does not have a fear of
15 returning to the child’s country of nation-
16 ality or country of last habitual residence
17 owing to a fear of persecution;

18 (iii) the return of such child to the
19 child’s country of nationality or country of
20 last habitual residence would not endanger
21 the life or safety of such child; and

22 (iv) the child is able to make an inde-
23 pendent decision to withdraw the child’s
24 application for admission due to age or
25 other lack of capacity.

1 (B) RIGHT OF CONSULTATION.—Any child
2 described in subparagraph (A) shall have the
3 right to consult with a consular officer from the
4 child’s country of nationality or country of last
5 habitual residence prior to repatriation, as well
6 as consult with the Office, telephonically, and
7 such child shall be informed of that right in the
8 child’s native language.

9 (3) RULE FOR APPREHENSIONS AT THE BOR-
10 DER.—The custody of unaccompanied alien children
11 not described in paragraph (2) who are apprehended
12 at the border of the United States or at a United
13 States port of entry shall be treated in accordance
14 with the provisions of subsection (b).

15 (b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN
16 CHILDREN FOUND IN THE INTERIOR OF THE UNITED
17 STATES.—

18 (1) ESTABLISHMENT OF JURISDICTION.—

19 (A) IN GENERAL.—Except as otherwise
20 provided under subparagraphs (B) and (C) and
21 subsection (a), the care and custody of all unac-
22 companied alien children, including responsi-
23 bility for their detention, where appropriate,
24 shall be under the jurisdiction of the Office.

1 (B) EXCEPTION FOR CHILDREN WHO HAVE
2 COMMITTED CRIMES.—Notwithstanding sub-
3 paragraph (A), the Directorate shall retain or
4 assume the custody and care of any unaccom-
5 panied alien child who—

6 (i) has been charged with any felony,
7 excluding offenses proscribed by the Immi-
8 gration and Nationality Act (8 U.S.C.
9 1101 et seq.), while such charges are pend-
10 ing; or

11 (ii) has been convicted of any such fel-
12 ony.

13 (C) EXCEPTION FOR CHILDREN WHO
14 THREATEN NATIONAL SECURITY.—Notwith-
15 standing subparagraph (A), the Directorate
16 shall retain or assume the custody and care of
17 an unaccompanied alien child if the Secretary
18 has substantial evidence, based on an individ-
19 ualized determination, that such child could
20 personally endanger the national security of the
21 United States.

22 (D) TRAFFICKING VICTIMS.—For purposes
23 of section 462 of the Homeland Security Act of
24 2002 (6 U.S.C. 279) and this Act, an unaccom-
25 panied alien child who is eligible for services au-

1 thorized under the Victims of Trafficking and
2 Violence Protection Act of 2000 (Public Law
3 106–386), shall be considered to be in the cus-
4 tody of the Office.

5 (2) NOTIFICATION.—

6 (A) IN GENERAL.—The Secretary shall
7 promptly notify the Office upon—

8 (i) the apprehension of an unaccom-
9 panied alien child;

10 (ii) the discovery that an alien in the
11 custody of the Directorate is an unaccom-
12 panied alien child;

13 (iii) any claim by an alien in the cus-
14 tody of the Directorate that such alien is
15 under the age of 18; or

16 (iv) any suspicion that an alien in the
17 custody of the Directorate who has claimed
18 to be over the age of 18 is actually under
19 the age of 18.

20 (B) SPECIAL RULE.—In the case of an
21 alien described in clause (iii) or (iv) of subpara-
22 graph (A), the Director shall make an age de-
23 termination in accordance with section 105 and
24 take whatever other steps are necessary to de-
25 termine whether or not such alien is eligible for

1 treatment under section 462 of the Homeland
2 Security Act of 2002 (6 U.S.C. 279) or this
3 Act.

4 (3) TRANSFER OF UNACCOMPANIED ALIEN
5 CHILDREN.—

6 (A) TRANSFER TO THE OFFICE.—The care
7 and custody of an unaccompanied alien child
8 shall be transferred to the Office—

9 (i) in the case of a child not described
10 in subparagraph (B) or (C) of paragraph
11 (1), not later than 72 hours after a deter-
12 mination is made that such child is an un-
13 accompanied alien child;

14 (ii) in the case of a child whose cus-
15 tody and care has been retained or as-
16 sumed by the Directorate pursuant to sub-
17 paragraph (B) or (C) of paragraph (1),
18 immediately following a determination that
19 the child no longer meets the description
20 set forth in such subparagraphs; or

21 (iii) in the case of a child who was
22 previously released to an individual or enti-
23 ty described in section 102(a)(1), upon a
24 determination by the Director that such in-

1 dividual or entity is no longer able to care
2 for the child.

3 (B) TRANSFER TO THE DIRECTORATE.—

4 Upon determining that a child in the custody of
5 the Office is described in subparagraph (B) or
6 (C) of paragraph (1), the Director shall trans-
7 fer the care and custody of such child to the
8 Directorate.

9 (C) PROMPTNESS OF TRANSFER.—In the
10 event of a need to transfer a child under this
11 paragraph, the sending office shall make
12 prompt arrangements to transfer such child and
13 the receiving office shall make prompt arrange-
14 ments to receive such child.

15 (e) AGE DETERMINATIONS.—In any case in which
16 the age of an alien is in question and the resolution of
17 questions about the age of such alien would affect the
18 alien's eligibility for treatment under section 462 of the
19 Homeland Security Act of 2002 (6 U.S.C. 279) or this
20 Act, a determination of whether or not such alien meets
21 such age requirements shall be made by the Director in
22 accordance with section 105.

1 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**
2 **ALIEN CHILDREN WITH RELATIVES IN THE**
3 **UNITED STATES.**

4 (a) **PLACEMENT AUTHORITY.—**

5 (1) **ORDER OF PREFERENCE.—**Subject to the
6 discretion of the Director under section 462(b)(2) of
7 the Homeland Security Act of 2002 (6 U.S.C.
8 279(b)(2)) and under paragraph (4) of this sub-
9 section and section 103(a)(2) of this Act, an unac-
10 companied alien child in the custody of the Office
11 shall be promptly placed with 1 of the following indi-
12 viduals or entities in the following order of pref-
13 erence:

14 (A) A parent who seeks to establish cus-
15 tody, as described in paragraph (3)(A).

16 (B) A legal guardian who seeks to estab-
17 lish custody, as described in paragraph (3)(A).

18 (C) An adult relative.

19 (D) An individual or entity designated by
20 the parent or legal guardian that is capable and
21 willing to care for the well-being of the child.

22 (E) A State-licensed juvenile shelter, group
23 home, or foster care program willing to accept
24 physical custody of the child.

25 (F) A qualified adult or entity seeking cus-
26 tody of the child when it appears that there is

1 no other likely alternative to long-term deten-
2 tion and family reunification does not appear to
3 be a reasonable alternative. For purposes of
4 this subparagraph, the Office shall decide who
5 is a qualified adult or entity and promulgate
6 regulations in accordance with such decision.

7 (2) SUITABILITY ASSESSMENT.—Notwith-
8 standing paragraph (1), no unaccompanied alien
9 child shall be placed with a person or entity unless
10 a valid suitability assessment conducted by an agen-
11 cy of the State of the child’s proposed residence, by
12 an agency authorized by that State to conduct such
13 an assessment, or by an appropriate voluntary agen-
14 cy contracted with the Office to conduct such assess-
15 ments has found that the person or entity is capable
16 of providing for the child’s physical and mental well-
17 being.

18 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO
19 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

20 (A) PLACEMENT WITH PARENT OR LEGAL
21 GUARDIAN.—If an unaccompanied alien child is
22 placed with any person or entity other than a
23 parent or legal guardian, but subsequent to
24 that placement a parent or legal guardian seeks
25 to establish custody, the Director shall assess

1 the suitability of placing the child with the par-
2 ent or legal guardian and shall make a written
3 determination on the child's placement within
4 30 days.

5 (B) RULE OF CONSTRUCTION.—Nothing in
6 this Act shall be construed to—

7 (i) supersede obligations under any
8 treaty or other international agreement to
9 which the United States is a party, includ-
10 ing The Hague Convention on the Civil As-
11 pects of International Child Abduction, the
12 Vienna Declaration and Program of Ac-
13 tion, and the Declaration of the Rights of
14 the Child; or

15 (ii) limit any right or remedy under
16 such international agreement.

17 (4) PROTECTION FROM SMUGGLERS AND TRAF-
18 FICKERS.—

19 (A) POLICIES AND PROGRAMS.—

20 (i) IN GENERAL.—The Director shall
21 establish policies and programs to ensure
22 that unaccompanied alien children are pro-
23 tected from smugglers, traffickers, or other
24 persons seeking to victimize or otherwise

1 engage such children in criminal, harmful,
2 or exploitative activity.

3 (ii) WITNESS PROTECTION PROGRAMS
4 INCLUDED.—The programs established
5 pursuant to clause (i) may include witness
6 protection programs.

7 (B) CRIMINAL INVESTIGATIONS AND PROS-
8 ECUTIONS.—Any officer or employee of the Of-
9 fice or the Department of Homeland Security,
10 and any grantee or contractor of the Office,
11 who suspects any individual of being involved in
12 any activity described in subparagraph (A) shall
13 report such individual to Federal or State pros-
14 ecutors for criminal investigation and prosecu-
15 tion.

16 (C) DISCIPLINARY ACTION.—Any officer or
17 employee of the Office or the Department of
18 Homeland Security, and any grantee or con-
19 tractor of the Office, who suspects an attorney
20 of being involved in any activity described in
21 subparagraph (A) shall report the individual to
22 the State bar association of which the attorney
23 is a member, or to other appropriate discipli-
24 nary authorities, for appropriate disciplinary ac-
25 tion that may include private or public admoni-

1 tion or censure, suspension, or disbarment of
2 the attorney from the practice of law.

3 (5) GRANTS AND CONTRACTS.—Subject to the
4 availability of appropriations, the Director may
5 make grants to, and enter into contracts with, vol-
6 untary agencies to carry out section 462 of the
7 Homeland Security Act of 2002 (6 U.S.C. 279) or
8 to carry out this section.

9 (6) REIMBURSEMENT OF STATE EXPENSES.—
10 Subject to the availability of appropriations, the Di-
11 rector may reimburse States for any expenses they
12 incur in providing assistance to unaccompanied alien
13 children who are served pursuant to section 462 of
14 the Homeland Security Act of 2002 (6 U.S.C. 279)
15 or this Act.

16 (b) CONFIDENTIALITY.—All information obtained by
17 the Office relating to the immigration status of a person
18 described in subparagraphs (A), (B), and (C) of sub-
19 section (a)(1) shall remain confidential and may be used
20 only for the purposes of determining such person’s quali-
21 fications under subsection (a)(1).

22 (c) REQUIRED DISCLOSURE.—The Secretary of
23 Health and Human Services or the Secretary of Homeland
24 Security shall provide the information furnished under

1 this section, and any other information derived from such
2 furnished information, to—

3 (1) a duly recognized law enforcement entity in
4 connection with an investigation or prosecution of an
5 offense described in paragraph (2) or (3) of section
6 212(a) of the Immigration and Nationality Act (8
7 U.S.C. 1182(a)), when such information is requested
8 in writing by such entity; or

9 (2) an official coroner for purposes of affirma-
10 tively identifying a deceased individual (whether or
11 not such individual is deceased as a result of a
12 crime).

13 (d) PENALTY.—Whoever knowingly uses, publishes,
14 or permits information to be examined in violation of this
15 section shall be fined not more than \$10,000.

16 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**
17 **UNACCOMPANIED ALIEN CHILDREN.**

18 (a) STANDARDS FOR PLACEMENT.—

19 (1) PROHIBITION OF DETENTION IN CERTAIN
20 FACILITIES.—Except as provided in paragraph (2),
21 an unaccompanied alien child shall not be placed in
22 an adult detention facility or a facility housing delin-
23 quent children.

24 (2) DETENTION IN APPROPRIATE FACILITIES.—

25 An unaccompanied alien child who has exhibited a

1 violent or criminal behavior that endangers others
2 may be detained in conditions appropriate to the be-
3 havior in a facility appropriate for delinquent chil-
4 dren.

5 (3) STATE LICENSURE.—In the case of a place-
6 ment of a child with an entity described in section
7 102(a)(1)(E), the entity must be licensed by an ap-
8 propriate State agency to provide residential, group,
9 child welfare, or foster care services for dependent
10 children.

11 (4) CONDITIONS OF DETENTION.—

12 (A) IN GENERAL.—The Director and the
13 Secretary of Homeland Security shall promul-
14 gate regulations incorporating standards for
15 conditions of detention in such placements that
16 provide for—

17 (i) educational services appropriate to
18 the child;

19 (ii) medical care;

20 (iii) mental health care, including
21 treatment of trauma, physical and sexual
22 violence, or abuse;

23 (iv) access to telephones;

24 (v) access to legal services;

25 (vi) access to interpreters;

1 (vii) supervision by professionals
2 trained in the care of children, taking into
3 account the special cultural, linguistic, and
4 experiential needs of children in immigra-
5 tion proceedings;

6 (viii) recreational programs and activi-
7 ties;

8 (ix) spiritual and religious needs; and

9 (x) dietary needs.

10 (B) NOTIFICATION OF CHILDREN.—Regu-
11 lations promulgated in accordance with sub-
12 paragraph (A) shall provide that all children
13 are notified orally and in writing of such stand-
14 ards in the child’s native language.

15 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-
16 rector and the Secretary shall develop procedures prohib-
17 iting the unreasonable use of—

18 (1) shackling, handcuffing, or other restraints
19 on children;

20 (2) solitary confinement; or

21 (3) pat or strip searches.

22 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to supersede procedures favoring
24 release of children to appropriate adults or entities or
25 placement in the least secure setting possible, as defined

1 in the Stipulated Settlement Agreement under Flores v.
2 Reno.

3 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**
4 **DREN.**

5 (a) COUNTRY CONDITIONS.—

6 (1) SENSE OF CONGRESS.—It is the sense of
7 Congress that, to the extent consistent with the trea-
8 ties and other international agreements to which the
9 United States is a party, and to the extent prac-
10 ticable, the United States Government should under-
11 take efforts to ensure that it does not repatriate
12 children in its custody into settings that would
13 threaten the life and safety of such children.

14 (2) ASSESSMENT OF CONDITIONS.—

15 (A) IN GENERAL.—The Secretary of State
16 shall include each year in the State Department
17 Country Report on Human Rights, an assess-
18 ment of the degree to which each country pro-
19 tects children from smugglers and traffickers.

20 (B) FACTORS FOR ASSESSMENT.—The Di-
21 rectorate shall consult the State Department
22 Country Report on Human Rights and the Vic-
23 tims of Trafficking and Violence Protection Act
24 of 2000: Trafficking in Persons Report in as-

1 sessing whether to repatriate an unaccompanied
2 alien child to a particular country.

3 (b) REPORT ON REPATRIATION OF UNACCOMPANIED
4 ALIEN CHILDREN.—

5 (1) IN GENERAL.—Not later than 18 months
6 after the date of enactment of this Act, and annually
7 thereafter, the Secretary of Homeland Security shall
8 submit a report to the Committees on the Judiciary
9 of the House of Representatives and the Senate on
10 efforts to repatriate unaccompanied alien children.

11 (2) CONTENTS.—The report submitted under
12 paragraph (1) shall include, at a minimum, the fol-
13 lowing information:

14 (A) The number of unaccompanied alien
15 children ordered removed and the number of
16 such children actually removed from the United
17 States.

18 (B) A description of the type of immigra-
19 tion relief sought and denied to such children.

20 (C) A statement of the nationalities, ages,
21 and gender of such children.

22 (D) A description of the procedures used
23 to effect the removal of such children from the
24 United States.

1 (E) A description of steps taken to ensure
2 that such children were safely and humanely re-
3 patriated to their country of origin.

4 (F) Any information gathered in assess-
5 ments of country and local conditions pursuant
6 to subsection (a)(2).

7 **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**
8 **ALIEN CHILD.**

9 (a) IN GENERAL.—The Director shall develop proce-
10 dures to make a prompt determination of the age of an
11 alien in the custody of the Department of Homeland Secu-
12 rity or the Office, when the age of the alien is at issue.
13 Such procedures shall permit the presentation of multiple
14 forms of evidence, including testimony of the child, to de-
15 termine the age of the unaccompanied alien for purposes
16 of placement, custody, parole, and detention. Such proce-
17 dures shall allow the appeal of a determination to an im-
18 migration judge. The Secretary of Homeland Security
19 shall permit the Office to have reasonable access to aliens
20 in the custody of the Secretary so as to ensure a prompt
21 determination of the age of such alien.

22 (b) PROHIBITION ON SOLE MEANS OF DETERMINING
23 AGE.—Neither radiographs nor the attestation of an alien
24 shall be used as the sole means of determining age for
25 the purposes of determining an alien’s eligibility for treat-

1 ment under section 462 of the Homeland Security Act of
 2 2002 (6 U.S.C. 279) or this Act.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 4 tion shall be construed to place the burden of proof in
 5 determining the age of an alien on the government.

6 **SEC. 106. EFFECTIVE DATE.**

7 This title shall take effect 90 days after the date of
 8 enactment of this Act.

9 **TITLE II—ACCESS BY UNACCOM-**
 10 **PANIED ALIEN CHILDREN TO**
 11 **GUARDIANS AD LITEM AND**
 12 **COUNSEL**

13 **SEC. 201. GUARDIANS AD LITEM.**

14 (a) **ESTABLISHMENT OF GUARDIAN AD LITEM PRO-**
 15 **GRAM.**—

16 (1) **APPOINTMENT.**—The Director may, in the
 17 Director’s discretion, appoint a guardian ad litem
 18 who meets the qualifications described in paragraph
 19 (2) for an unaccompanied alien child. The Director
 20 is encouraged, wherever practicable, to contract with
 21 a voluntary agency for the selection of an individual
 22 to be appointed as a guardian ad litem under this
 23 paragraph.

24 (2) **QUALIFICATIONS OF GUARDIAN AD**
 25 **LITEM.**—

1 (A) IN GENERAL.—No person shall serve
2 as a guardian ad litem unless such person—

3 (i) is a child welfare professional or
4 other individual who has received training
5 in child welfare matters; and

6 (ii) possesses special training on the
7 nature of problems encountered by unac-
8 companied alien children.

9 (B) PROHIBITION.—A guardian ad litem
10 shall not be an employee of the Directorate, the
11 Office, or the Executive Office for Immigration
12 Review.

13 (3) DUTIES.—The guardian ad litem shall—

14 (A) conduct interviews with the child in a
15 manner that is appropriate, taking into account
16 the child's age;

17 (B) investigate the facts and circumstances
18 relevant to such child's presence in the United
19 States, including facts and circumstances aris-
20 ing in the country of the child's nationality or
21 last habitual residence and facts and cir-
22 cumstances arising subsequent to the child's de-
23 parture from such country;

24 (C) work with counsel to identify the
25 child's eligibility for relief from removal or vol-

1 untary departure by sharing with counsel infor-
2 mation collected under subparagraph (B);

3 (D) develop recommendations on issues
4 relative to the child’s custody, detention, re-
5 lease, and repatriation;

6 (E) take reasonable steps to ensure that
7 the best interests of the child are promoted
8 while the child participates in, or is subject to,
9 proceedings or matters under the Immigration
10 and Nationality Act (8 U.S.C. 1101 et seq.);

11 (F) take reasonable steps to ensure that
12 the child understands the nature of the legal
13 proceedings or matters and determinations
14 made by the court, and ensure that all informa-
15 tion is conveyed in an age-appropriate manner;
16 and

17 (G) report factual findings relating to—

18 (i) information gathered pursuant to
19 subparagraph (B);

20 (ii) the care and placement of the
21 child during the pendency of the pro-
22 ceedings or matters; and

23 (iii) any other information gathered
24 pursuant to subparagraph (D).

1 (4) TERMINATION OF APPOINTMENT.—The
2 guardian ad litem shall carry out the duties de-
3 scribed in paragraph (3) until—

4 (A) those duties are completed;

5 (B) the child departs the United States;

6 (C) the child is granted permanent resi-
7 dent status in the United States;

8 (D) the child attains the age of 18; or

9 (E) the child is placed in the custody of a
10 parent or legal guardian;

11 whichever occurs first.

12 (5) POWERS.—The guardian ad litem—

13 (A) shall have reasonable access to the
14 child, including access while such child is being
15 held in detention or in the care of a foster fam-
16 ily;

17 (B) shall be permitted to review all records
18 and information relating to such proceedings
19 that are not deemed privileged or classified;

20 (C) may seek independent evaluations of
21 the child;

22 (D) shall be notified in advance of all hear-
23 ings or interviews involving the child that are
24 held in connection with proceedings or matters
25 under the Immigration and Nationality Act (8

1 U.S.C. 1101 et seq.), and shall be given a rea-
2 sonable opportunity to be present at such hear-
3 ings or interviews;

4 (E) shall be permitted to consult with the
5 child during any hearing or interview involving
6 such child; and

7 (F) shall be provided at least 24 hours ad-
8 vance notice of a transfer of that child to a dif-
9 ferent placement, absent compelling and un-
10 usual circumstances warranting the transfer of
11 such child prior to notification.

12 (b) TRAINING.—The Director shall provide profes-
13 sional training for all persons serving as guardians ad
14 litem under this section in the—

15 (1) circumstances and conditions that unaccom-
16 panied alien children face; and

17 (2) various immigration benefits for which such
18 alien child might be eligible.

19 (c) PILOT PROGRAM.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, the Director
22 shall establish and begin to carry out a pilot pro-
23 gram to test the implementation of subsection (a).

24 (2) PURPOSE.—The purpose of the pilot pro-
25 gram established pursuant to paragraph (1) is to—

1 (A) study and assess the benefits of pro-
2 viding guardians ad litem to assist unaccom-
3 panied alien children involved in immigration
4 proceedings or matters;

5 (B) assess the most efficient and cost-ef-
6 fective means of implementing the guardian ad
7 litem provisions in this section; and

8 (C) assess the feasibility of implementing
9 such provisions on a nationwide basis for all un-
10 accompanied alien children in the care of the
11 Office.

12 (3) SCOPE OF PROGRAM.—

13 (A) SELECTION OF SITE.—The Director
14 shall select 3 sites in which to operate the pilot
15 program established pursuant to paragraph (1).

16 (B) NUMBER OF CHILDREN.—To the
17 greatest extent possible, each site selected
18 under subparagraph (A) should have at least 25
19 children held in immigration custody at any
20 given time.

21 (4) REPORT TO CONGRESS.—Not later than 1
22 year after the date on which the first pilot program
23 is established pursuant to paragraph (1), the Direc-
24 tor shall report to the Committees on the Judiciary

1 of the Senate and the House of Representatives on
2 subparagraphs (A) through (C) of paragraph (2).

3 **SEC. 202. COUNSEL.**

4 (a) ACCESS TO COUNSEL.—

5 (1) IN GENERAL.—The Director shall ensure
6 that all unaccompanied alien children in the custody
7 of the Office, or in the custody of the Directorate,
8 who are not described in section 101(a)(2) shall
9 have competent counsel to represent them in immi-
10 gration proceedings or matters.

11 (2) PRO BONO REPRESENTATION.—To the max-
12 imum extent practicable, the Director shall utilize
13 the services of competent pro bono counsel who
14 agree to provide representation to such children
15 without charge. To the maximum extent practicable,
16 the Director shall ensure that placements made
17 under subparagraphs (D), (E), and (F) of section
18 102(a)(1) are in cities where there is a demonstrated
19 capacity for competent pro bono representation.

20 (3) DEVELOPMENT OF NECESSARY INFRA-
21 STRUCTURES AND SYSTEMS.—In ensuring that legal
22 representation is provided to such children, the Di-
23 rector shall develop the necessary mechanisms to
24 identify entities available to provide such legal as-

1 sistance and representation and to recruit such enti-
2 ties.

3 (4) CONTRACTING AND GRANT MAKING AU-
4 THORITY.—

5 (A) IN GENERAL.—The Director shall
6 enter into contracts with or make grants to
7 nonprofit agencies with relevant expertise in the
8 delivery of immigration-related legal services to
9 children in order to carry out the responsibil-
10 ities of this Act, including but not limited to
11 such activities as providing legal orientation,
12 screening cases for referral, recruiting, training,
13 and overseeing pro bono attorneys. Nonprofit
14 agencies may enter into subcontracts with or
15 make grants to private voluntary agencies with
16 relevant expertise in the delivery of immigra-
17 tion-related legal services to children in order to
18 carry out this subsection.

19 (B) CONSIDERATIONS REGARDING GRANTS
20 AND CONTRACTS.—In making grants and enter-
21 ing into contracts with agencies in accordance
22 with subparagraph (A), the Director shall take
23 into consideration whether the agencies in ques-
24 tion are capable of properly administering the

1 services covered by such grants or contracts
2 without an undue conflict of interest.

3 (5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—
4

5 (A) DEVELOPMENT OF GUIDELINES.—The
6 Executive Office for Immigration Review, in
7 consultation with voluntary agencies and national
8 experts, shall develop model guidelines
9 for the legal representation of alien children in
10 immigration proceedings based on the children's
11 asylum guidelines, the American Bar Association
12 Model Rules of Professional Conduct, and
13 other relevant domestic or international sources.

14 (B) PURPOSE OF GUIDELINES.—The
15 guidelines developed in accordance with sub-
16 paragraph (A) shall be designed to help protect
17 a child from any individual suspected of involve-
18 ment in any criminal, harmful, or exploitative
19 activity associated with the smuggling or traf-
20 ficking of children, while ensuring the fairness
21 of the removal proceeding in which the child is
22 involved.

23 (C) IMPLEMENTATION.—The Executive
24 Office for Immigration Review shall adopt the
25 guidelines developed in accordance with sub-

1 paragraph (A) and submit them for adoption by
2 national, State, and local bar associations.

3 (b) DUTIES.—Counsel shall—

4 (1) represent the unaccompanied alien child in
5 all proceedings and matters relating to the immigra-
6 tion status of the child or other actions involving the
7 Directorate;

8 (2) appear in person for all individual merits
9 hearings before the Executive Office for Immigration
10 Review and interviews involving the Directorate; and

11 (3) owe the same duties of undivided loyalty,
12 confidentiality, and competent representation to the
13 child as is due an adult client.

14 (c) ACCESS TO CHILD.—

15 (1) IN GENERAL.—Counsel shall have reason-
16 able access to the unaccompanied alien child, includ-
17 ing access while the child is being held in detention,
18 in the care of a foster family, or in any other setting
19 that has been determined by the Office.

20 (2) RESTRICTION ON TRANSFERS.—Absent
21 compelling and unusual circumstances, no child who
22 is represented by counsel shall be transferred from
23 the child's placement to another placement unless
24 advance notice of at least 24 hours is made to coun-
25 sel of such transfer.

1 (d) NOTICE TO COUNSEL DURING IMMIGRATION
2 PROCEEDINGS.—

3 (1) IN GENERAL.—Except when otherwise re-
4 quired in an emergency situation involving the phys-
5 ical safety of the child, counsel shall be given prompt
6 and adequate notice of all immigration matters af-
7 fecting or involving an unaccompanied alien child,
8 including adjudications, proceedings, and processing,
9 before such actions are taken.

10 (2) OPPORTUNITY TO CONSULT WITH COUN-
11 SEL.—An unaccompanied alien child in the custody
12 of the Office may not give consent to any immigra-
13 tion action, including consenting to voluntary depart-
14 ure, unless first afforded an opportunity to consult
15 with counsel.

16 (e) ACCESS TO RECOMMENDATIONS OF GUARDIAN
17 AD LITEM.—Counsel shall be afforded an opportunity to
18 review the recommendation by the guardian ad litem af-
19 fecting or involving a client who is an unaccompanied alien
20 child.

21 **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

22 (a) EFFECTIVE DATE.—This title shall take effect
23 180 days after the date of enactment of this Act.

1 (b) APPLICABILITY.—The provisions of this title shall
 2 apply to all unaccompanied alien children in Federal cus-
 3 tody on, before, or after the effective date of this title.

4 **TITLE III—STRENGTHENING**
 5 **POLICIES FOR PERMANENT**
 6 **PROTECTION OF ALIEN CHIL-**
 7 **DREN**

8 **SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.**

9 (a) J VISA.—Section 101(a)(27)(J) of the Immigra-
 10 tion and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is
 11 amended to read as follows:

12 “(J) an immigrant who is 18 years of age and
 13 under on the date of application who is present in
 14 the United States—

15 “(i) who by a court order, which shall be
 16 binding on the Secretary of Homeland Security
 17 for purposes of adjudications under this sub-
 18 paragraph, was declared dependent on a juve-
 19 nile court located in the United States or whom
 20 such a court has legally committed to, or placed
 21 under the custody of, a department or agency
 22 of a State, or an individual or entity appointed
 23 by a State or juvenile court located in the
 24 United States, due to abuse, neglect, or aban-

1 donment, or a similar basis found under State
2 law;

3 “(ii) for whom it has been determined in
4 administrative or judicial proceedings that it
5 would not be in the alien’s best interest to be
6 returned to the alien’s or parent’s previous
7 country of nationality or country of last habit-
8 ual residence; and

9 “(iii) with respect to a child in Federal
10 custody, for whom the Office of Refugee Reset-
11 tlement of the Department of Health and
12 Human Services has certified to the Director of
13 the Bureau of Citizenship and Immigration
14 Services that the classification of an alien as a
15 special immigrant under this subparagraph has
16 not been made solely to provide an immigration
17 benefit to that alien;

18 except that no natural parent or prior adoptive par-
19 ent of any alien provided special immigrant status
20 under this subparagraph shall thereafter, by virtue
21 of such parentage, be accorded any right, privilege,
22 or status under this Act;”.

23 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1255(h)(2)(A)) is amended to read as follows:

1 “(A) paragraphs (4), (5)(A), (6)(A), and
2 (7) of section 212(a) shall not apply; and”.

3 (c) **ELIGIBILITY FOR ASSISTANCE.**—A child who has
4 been granted relief under section 101(a)(27)(J) of the Im-
5 migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),
6 shall be eligible for all funds made available under section
7 412(d) of that Act (8 U.S.C. 1522(d)) until such time as
8 the child attains the age designated in section
9 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or
10 until the child is placed in a permanent adoptive home,
11 whichever occurs first.

12 (d) **TRANSITION RULE.**—Notwithstanding any other
13 provision of law, any child described in section
14 101(a)(27)(J) of the Immigration and Nationality Act (8
15 U.S.C. 1101(a)(27)(J)) who filed an application for a visa
16 before the date of enactment of this Act and who was 19,
17 20, or 21 years of age on the date such application was
18 filed shall not be denied a visa after the date of enactment
19 of this Act because of such alien’s age.

20 **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**
21 **PARTIES WHO COME INTO CONTACT WITH**
22 **UNACCOMPANIED ALIEN CHILDREN.**

23 (a) **TRAINING OF STATE AND LOCAL OFFICIALS AND**
24 **CERTAIN PRIVATE PARTIES.**—The Secretary of Health
25 and Human Services, acting jointly with the Secretary,

1 shall provide appropriate training to be available to State
2 and county officials, child welfare specialists, teachers,
3 public counsel, and juvenile judges who come into contact
4 with unaccompanied alien children. The training shall pro-
5 vide education on the processes pertaining to unaccom-
6 panied alien children with pending immigration status and
7 on the forms of relief potentially available. The Director
8 shall be responsible for establishing a core curriculum that
9 can be incorporated into education, training, or orienta-
10 tion modules or formats that are currently used by these
11 professionals.

12 (b) TRAINING OF DIRECTORATE PERSONNEL.—The
13 Secretary, acting jointly with the Secretary of Health and
14 Human Services, shall provide specialized training to all
15 personnel of the Directorate who come into contact with
16 unaccompanied alien children. In the case of Border Pa-
17 trol agents and immigration inspectors, such training shall
18 include specific training on identifying children at the
19 United States borders or at United States ports of entry
20 who have been victimized by smugglers or traffickers, and
21 children for whom asylum or special immigrant relief may
22 be appropriate, including children described in section
23 101(a)(2).

1 **SEC. 303. REPORT.**

2 Not later than 1 year after the date of enactment
3 of this Act and annually thereafter, the Secretary of
4 Health and Human Services shall submit a report for the
5 previous fiscal year to the Committees on the Judiciary
6 of the House of Representatives and the Senate that
7 contains—

8 (1) data related to the implementation of sec-
9 tion 462 of the Homeland Security Act (6 U.S.C.
10 279);

11 (2) data regarding the care and placement of
12 children in accordance with this Act;

13 (3) data regarding the provision of guardian ad
14 litem and counsel services in accordance with this
15 Act; and

16 (4) any other information that the Director or
17 the Secretary of Health and Human Services deter-
18 mines to be appropriate.

19 **SEC. 304. EFFECTIVE DATE.**

20 The amendment made by section 301 shall apply to
21 all aliens who were in the United States before, on, or
22 after the date of enactment of this Act.

1 **TITLE IV—CHILDREN REFUGEE**
2 **AND ASYLUM SEEKERS**

3 **SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

4 (a) SENSE OF CONGRESS.—Congress commends the
5 Immigration and Naturalization Service for its issuance
6 of its “Guidelines for Children’s Asylum Claims”, dated
7 December 1998, and encourages and supports the imple-
8 mentation of such guidelines by the Immigration and Nat-
9 uralization Service (and its successor entities) in an effort
10 to facilitate the handling of children’s asylum claims. Con-
11 gress calls upon the Executive Office for Immigration Re-
12 view of the Department of Justice to adopt the “Guide-
13 lines for Children’s Asylum Claims” in its handling of chil-
14 dren’s asylum claims before immigration judges and the
15 Board of Immigration Appeals.

16 (b) TRAINING.—The Secretary shall provide periodic
17 comprehensive training under the “Guidelines for Chil-
18 dren’s Asylum Claims” to asylum officers, immigration
19 judges, members of the Board of Immigration Appeals,
20 and immigration officers who have contact with children
21 in order to familiarize and sensitize such officers to the
22 needs of children asylum seekers. Voluntary agencies shall
23 be allowed to assist in such training.

1 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

2 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-
3 DREN.—Section 207(e) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1157(e)) is amended—

5 (1) by redesignating paragraphs (3), (4), (5),
6 (6), and (7) as paragraphs (4), (5), (6), (7), and
7 (8), respectively; and

8 (2) by inserting after paragraph (2) the fol-
9 lowing:

10 “(3) An analysis of the worldwide situation
11 faced by unaccompanied refugee children, by region,
12 which shall include an assessment of—

13 “(A) the number of unaccompanied refugee
14 children, by region;

15 “(B) the capacity of the Department of
16 State to identify such refugees;

17 “(C) the capacity of the international com-
18 munity to care for and protect such refugees;

19 “(D) the capacity of the voluntary agency
20 community to resettle such refugees in the
21 United States;

22 “(E) the degree to which the United States
23 plans to resettle such refugees in the United
24 States in the coming fiscal year; and

1 “(F) the fate that will befall such unac-
 2 companied refugee children for whom resettle-
 3 ment in the United States is not possible.”.

4 (b) TRAINING ON THE NEEDS OF UNACCOMPANIED
 5 REFUGEE CHILDREN.—Section 207(f)(2) of the Immigra-
 6 tion and Nationality Act (8 U.S.C. 1157(f)(2)) is amended
 7 by—

8 (1) striking “and” after “countries,”; and

9 (2) inserting before the period at the end the
 10 following: “, and instruction on the needs of unac-
 11 companied refugee children”.

12 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**
 13 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**
 14 **CUMSTANCES.**

15 (a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any
 16 unaccompanied alien child apprehended by the Direc-
 17 torate, except for an unaccompanied alien child subject to
 18 exceptions under paragraph (1)(A) or (2) of section
 19 (101)(a) of this Act, shall be placed in removal pro-
 20 ceedings under section 240 of the Immigration and Na-
 21 tionality Act (8 U.S.C. 1229a).

22 (b) EXCEPTION FROM TIME LIMIT FOR FILING ASY-
 23 LUM APPLICATION.—Section 208(a)(2) of the Immigra-
 24 tion and Nationality Act (8 U.S.C. 1158(a)(2)) is amend-
 25 ed by adding at the end the following:

1 “(E) APPLICABILITY.—Subparagraphs (A)
2 and (B) shall not apply to an unaccompanied
3 alien child as defined in section 101(a)(51).”.

4 **TITLE V—AUTHORIZATION OF**
5 **APPROPRIATIONS**

6 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) IN GENERAL.—There are authorized to be appro-
8 priated to the Department of Homeland Security, the De-
9 partment of Justice, and the Department of Health and
10 Human Services, such sums as may be necessary to carry
11 out—

12 (1) section 462 of the Homeland Security Act
13 of 2002 (6 U.S.C. 279); and

14 (2) this Act.

15 (b) AVAILABILITY OF FUNDS.—Amounts appro-
16 priated pursuant to subsection (a) are authorized to re-
17 main available until expended.

1 **TITLE VI—AMENDMENTS TO THE**
2 **HOMELAND SECURITY ACT**
3 **OF 2002**

4 **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**
5 **THE OFFICE OF REFUGEE RESETTLEMENT**
6 **WITH RESPECT TO UNACCOMPANIED ALIEN**
7 **CHILDREN.**

8 (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-
9 TOR.—Section 462(b)(1) of the Homeland Security Act of
10 2002 (6 U.S.C. 279(b)(1)) is amended—

11 (1) in subparagraph (K), by striking “and” at
12 the end;

13 (2) in subparagraph (L), by striking the period
14 at the end and inserting “, including regular follow-
15 up visits to such facilities, placements, and other en-
16 tities, to assess the continued suitability of such
17 placements; and”;

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

19 “(M) ensuring minimum standards of care for
20 all unaccompanied alien children—

21 “(i) for whom detention is necessary; and

22 “(ii) who reside in settings that are alter-
23 native to detention.”.

24 (b) ADDITIONAL POWERS OF THE DIRECTOR.—Sec-
25 tion 462(b) of the Homeland Security Act of 2002 (6

1 U.S.C. 279(b)) is amended by adding at the end the fol-
2 lowing:

3 “(4) POWERS.—In carrying out the duties
4 under paragraph (3), the Director shall have the
5 power to—

6 “(A) contract with service providers to per-
7 form the services described in sections 102,
8 103, 201, and 202 of the Unaccompanied Alien
9 Child Protection Act of 2004; and

10 “(B) compel compliance with the terms
11 and conditions set forth in section 103 of the
12 Unaccompanied Alien Child Protection Act of
13 2004, including the power to—

14 “(i) declare providers to be in breach
15 and seek damages for noncompliance;

16 “(ii) terminate the contracts of pro-
17 viders that are not in compliance with such
18 conditions; and

19 “(iii) reassign any unaccompanied
20 alien child to a similar facility that is in
21 compliance with such section.”.

22 **SEC. 602. TECHNICAL CORRECTIONS.**

23 Section 462(b) of the Homeland Security Act of 2002
24 (6 U.S.C. 279(b)), as amended by section 601, is
25 amended—

1 (1) in paragraph (3), by striking “paragraph
2 (1)(G)” and inserting “paragraph (1)”; and

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

4 “(5) STATUTORY CONSTRUCTION.—Nothing in
5 paragraph (2)(B) may be construed to require that
6 a bond be posted for unaccompanied alien children
7 who are released to a qualified sponsor.”.

8 **SEC. 603. EFFECTIVE DATE.**

9 The amendments made by this title shall take effect
10 as if enacted as part of the Homeland Security Act of
11 2002 (6 U.S.C. 101 et seq.).

 Passed the Senate October 11, 2004.

 Attest:

Secretary.

108TH CONGRESS
2^D SESSION

S. 1129

AN ACT

To provide for the protection of unaccompanied
alien children, and for other purposes.