

109TH CONGRESS  
1ST SESSION

# S. 119

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## 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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Unaccompanied Alien Child Protection Act of 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 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  
 CHILD ADVOCATES AND COUNSEL

Sec. 201. Child advocates.  
 Sec. 202. Counsel.  
 Sec. 203. Preservation of law enforcement authority.  
 Sec. 204. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT  
 PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile classification.  
 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.

3 **SEC. 2. DEFINITIONS.**

4 (a) IN GENERAL.—In this Act:

1           (1) COMPETENT.—The term “competent”, in  
2 reference to counsel, means an attorney, or a rep-  
3 resentative authorized to represent unaccompanied  
4 alien children in immigration proceedings or mat-  
5 ters, who—

6           (A) complies with the duties set forth in  
7 this Act;

8           (B)(i) is properly qualified to handle mat-  
9 ters involving unaccompanied alien children; or

10          (ii) is working under the auspices of a  
11 qualified nonprofit organization that is experi-  
12 enced in handling such matters; and

13          (C) if an attorney—

14           (i) is a member in good standing of  
15 the bar of the highest court of any State,  
16 possession, territory, Commonwealth, or  
17 the District of Columbia; and

18           (ii) is not under any order of any  
19 court suspending, enjoining, restraining,  
20 disbarring, or otherwise restricting the at-  
21 torney in the practice of law.

22           (2) DEPARTMENT.—The term “Department”  
23 means the Department of Homeland Security.

24           (3) DIRECTOR.—The term “Director” means  
25 the Director of the Office.

1           (4) OFFICE.—The term “Office” means the Of-  
 2           fice of Refugee Resettlement established by section  
 3           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 meaning given  
 9           the term in section 462(g)(2) of the Homeland Secu-  
 10          rity Act of 2002 (6 U.S.C. 279(g)(2)).

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

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

20          “(51) The term ‘unaccompanied alien child’ means  
 21          a child who—

22                 “(A) has no lawful immigration status in the  
 23                 United States;

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

25                 “(C) with respect to whom—

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

3           “(ii) no parent or legal guardian in the  
4           United States is available to provide care and  
5           physical custody.

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

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

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

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

18          **TITLE I—CUSTODY, RELEASE,**  
19          **FAMILY REUNIFICATION, AND**  
20          **DETENTION**

21          **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
22          **PANIED ALIEN CHILDREN.**

23          (a) **UNACCOMPANIED CHILDREN FOUND ALONG THE**  
24          **UNITED STATES BORDER OR AT UNITED STATES PORTS**  
25          **OF ENTRY.—**

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

8                   (A) permit such child to withdraw the  
9                   child’s application for admission pursuant to  
10                  section 235(a)(4) of the Immigration and Na-  
11                  tionality Act (8 U.S.C. 1225(a)(4)); and

12                  (B) return such child to the child’s country  
13                  of nationality or country of last habitual resi-  
14                  dence.

15           (2) SPECIAL RULE FOR CONTIGUOUS COUN-  
16           TRIES.—

17                   (A) IN GENERAL.—Any child who is a na-  
18                  tional or habitual resident of a country that is  
19                  contiguous with the United States and that has  
20                  an agreement in writing with the United States  
21                  providing for the safe return and orderly repa-  
22                  triation of unaccompanied alien children who  
23                  are nationals or habitual residents of such  
24                  country shall be treated in accordance with

1 paragraph (1), if a determination is made on a  
2 case-by-case basis that—

3 (i) such child is a national or habitual  
4 resident of a country described in this sub-  
5 paragraph;

6 (ii) such child does not have a fear of  
7 returning to the child's country of nation-  
8 ality or country of last habitual residence  
9 owing to a fear of persecution;

10 (iii) the return of such child to the  
11 child's country of nationality or country of  
12 last habitual residence would not endanger  
13 the life or safety of such child; and

14 (iv) the child is able to make an inde-  
15 pendent decision to withdraw the child's  
16 application for admission due to age or  
17 other lack of capacity.

18 (B) RIGHT OF CONSULTATION.—Any child  
19 described in subparagraph (A) shall have the  
20 right, and shall be informed of that right in the  
21 child's native language—

22 (i) to consult with a consular officer  
23 from the child's country of nationality or  
24 country of last habitual residence prior to  
25 repatriation; and

1 (ii) to consult, telephonically, with the  
2 Office.

3 (3) RULE FOR APPREHENSIONS AT THE BOR-  
4 DER.—The custody of unaccompanied alien children  
5 not described in paragraph (2) who are apprehended  
6 at the border of the United States or at a United  
7 States port of entry shall be treated in accordance  
8 with subsection (b).

9 (b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN  
10 CHILDREN FOUND IN THE INTERIOR OF THE UNITED  
11 STATES.—

12 (1) ESTABLISHMENT OF JURISDICTION.—

13 (A) IN GENERAL.—Except as otherwise  
14 provided under subparagraphs (B) and (C) and  
15 subsection (a), the care and custody of all unac-  
16 companied alien children, including responsi-  
17 bility for their detention, where appropriate,  
18 shall be under the jurisdiction of the Office.

19 (B) EXCEPTION FOR CHILDREN WHO HAVE  
20 COMMITTED CRIMES.—Notwithstanding sub-  
21 paragraph (A), the Department shall retain or  
22 assume the custody and care of any unaccom-  
23 panied alien child who—

24 (i) has been charged with any felony,  
25 excluding offenses proscribed by the Immi-



1           gration and Nationality Act (8 U.S.C.  
2           1101 et seq.), while such charges are pend-  
3           ing; or

4           (ii) has been convicted of any such fel-  
5           ony.

6           (C) EXCEPTION FOR CHILDREN WHO  
7           THREATEN NATIONAL SECURITY.—Notwith-  
8           standing subparagraph (A), the Department  
9           shall retain or assume the custody and care of  
10          an unaccompanied alien child if the Secretary  
11          has substantial evidence, based on an individ-  
12          ualized determination, that such child could  
13          personally endanger the national security of the  
14          United States.

15          (D) TRAFFICKING VICTIMS.—For purposes  
16          of section 462 of the Homeland Security Act of  
17          2002 (6 U.S.C. 279) and this Act, an unaccom-  
18          panied alien child who is eligible for services au-  
19          thorized under the Victims of Trafficking and  
20          Violence Protection Act of 2000 (Public Law  
21          106–386), shall be considered to be in the cus-  
22          tody of the Office.

23          (2) NOTIFICATION.—

24          (A) IN GENERAL.—The Secretary shall  
25          promptly notify the Office upon—

1 (i) the apprehension of an unaccom-  
2 panied alien child;

3 (ii) the discovery that an alien in the  
4 custody of the Department is an unaccom-  
5 panied alien child;

6 (iii) any claim by an alien in the cus-  
7 tody of the Department that such alien is  
8 under the age of 18; or

9 (iv) any suspicion that an alien in the  
10 custody of the Department who has  
11 claimed to be over the age of 18 is actually  
12 under the age of 18.

13 (B) SPECIAL RULE.—In the case of an  
14 alien described in clause (iii) or (iv) of subpara-  
15 graph (A), the Director shall make an age de-  
16 termination in accordance with section 105 and  
17 take whatever other steps are necessary to de-  
18 termine whether such alien is eligible for treat-  
19 ment under section 462 of the Homeland Secu-  
20 rity Act of 2002 (6 U.S.C. 279) or this Act.

21 (3) TRANSFER OF UNACCOMPANIED ALIEN  
22 CHILDREN.—

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

1 (i) in the case of a child not described  
2 in subparagraph (B) or (C) of paragraph  
3 (1), not later than 72 hours after a deter-  
4 mination is made that such child is an un-  
5 accompanied alien child;

6 (ii) in the case of a child whose cus-  
7 tody and care has been retained or as-  
8 sumed by the Department pursuant to sub-  
9 subparagraph (B) or (C) of paragraph (1),  
10 following a determination that the child no  
11 longer meets the description set forth in  
12 such subparagraphs; or

13 (iii) in the case of a child who was  
14 previously released to an individual or enti-  
15 ty described in section 102(a)(1), upon a  
16 determination by the Director that such in-  
17 dividual or entity is no longer able to care  
18 for the child.

19 (B) TRANSFER TO THE DEPARTMENT.—  
20 Upon determining that a child in the custody of  
21 the Office is described in subparagraph (B) or  
22 (C) of paragraph (1), the Director shall trans-  
23 fer the care and custody of such child to the  
24 Department.

1           (C) PROMPTNESS OF TRANSFER.—In the  
2           event of a need to transfer a child under this  
3           paragraph, the sending office shall make  
4           prompt arrangements to transfer such child and  
5           the receiving office shall make prompt arrange-  
6           ments to receive such child.

7           (c) AGE DETERMINATIONS.—In any case in which  
8           the age of an alien is in question and the resolution of  
9           questions about the age of such alien would affect the  
10          alien’s eligibility for treatment under section 462 of the  
11          Homeland Security Act of 2002 (6 U.S.C. 279) or this  
12          Act, a determination of whether or not such alien meets  
13          such age requirements shall be made in accordance with  
14          section 105, unless otherwise specified in subsection  
15          (b)(2)(B).

16          (d) ACCESS TO ALIEN.—The Secretary of Homeland  
17          Security shall permit the Office to have reasonable access  
18          to aliens in the custody of the Secretary to ensure a  
19          prompt determination of the age of such alien, if necessary  
20          under subsection (b)(2)(B).

21      **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
22                              **ALIEN CHILDREN WITH RELATIVES IN THE**  
23                              **UNITED STATES.**

24          (a) PLACEMENT AUTHORITY.—

1           (1) ORDER OF PREFERENCE.—Subject to the  
2 discretion of the Director under paragraph (4), sec-  
3 tion 103(a)(2), and section 462(b)(2) of the Home-  
4 land Security Act of 2002 (6 U.S.C. 279(b)(2)), an  
5 unaccompanied alien child in the custody of the Of-  
6 fice shall be promptly placed with 1 of the following  
7 individuals or entities in the following order of pref-  
8 erence:

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

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

13           (C) An adult relative.

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

17           (E) A State-licensed juvenile shelter, group  
18 home, or foster care program willing to accept  
19 custody of the child.

20           (F) A qualified adult or entity seeking cus-  
21 tody of the child when it appears that there is  
22 no other likely alternative to long-term deten-  
23 tion and family reunification does not appear to  
24 be a reasonable alternative. For purposes of  
25 this subparagraph, the Office shall decide who

1 is a qualified adult or entity and promulgate  
2 regulations in accordance with such decision.

3 (2) SUITABILITY ASSESSMENT.—

4 (A) GENERAL REQUIREMENTS.—Notwith-  
5 standing paragraph (1), and subject to the re-  
6 quirements of subparagraph (B), no unaccom-  
7 panied alien child shall be placed with a person  
8 or entity described in any of subparagraphs (A)  
9 through (F) of paragraph (1) unless the Direc-  
10 tor certifies, in writing, that the proposed cus-  
11 todian is capable of providing for the child's  
12 physical and mental well-being, based on—

13 (i) with respect to an individual  
14 custodian—

15 (I) verification of such individ-  
16 ual's identity and employment;

17 (II) a finding that such indi-  
18 vidual has not engaged in any activity  
19 that would indicate a potential risk to  
20 the child, including the activities de-  
21 scribed in paragraph (4)(A);

22 (III) a finding that such indi-  
23 vidual has no open investigation by a  
24 state or local child protective services

1 authority due to suspected child abuse  
2 or neglect;

3 (IV) verification that such indi-  
4 vidual has a plan for the provision of  
5 care for the child; and

6 (V) verification of familial rela-  
7 tionship of such individual, if any re-  
8 lationship is claimed; and

9 (ii) verification of nature and extent  
10 of previous relationship;

11 (iii) with respect to a custodial entity,  
12 verification of such entity's appropriate li-  
13 censure by the State, county, or other ap-  
14 plicable unit of government; and

15 (iv) such other information as the Di-  
16 rector determines appropriate.

17 (B) HOME STUDY.—

18 (i) IN GENERAL.—A home study shall  
19 be conducted prior to release with respect  
20 to each proposed custodian described in  
21 any of subparagraphs (A) through (F) of  
22 paragraph (1) unless waived by the Direc-  
23 tor.

24 (ii) SPECIAL NEEDS CHILDREN.—In  
25 the case of a special needs child with a dis-

1 ability (as defined in section 3 of the  
2 Americans with Disabilities Act of 1990  
3 (42 U.S.C. 12102(2)), a home study shall  
4 be conducted to determine if the child's  
5 needs can be properly met by the custo-  
6 dian.

7 (C) CONTRACT AUTHORITY.—The Director  
8 may, by grant or contract, arrange for some or  
9 all of the activities under this section to be car-  
10 ried out by—

11 (i) an agency of the State of the  
12 child's proposed residence;

13 (ii) an agency authorized by such  
14 State to conduct such activities; or

15 (iii) an appropriate voluntary or non-  
16 profit agency.

17 (D) DATABASE ACCESS.—In conducting  
18 suitability assessments, the Director shall be  
19 given access to all relevant information in the  
20 appropriate Federal, State, and local law en-  
21 forcement and immigration databases.

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

24 (A) PLACEMENT WITH PARENT OR LEGAL  
25 GUARDIAN.—If an unaccompanied alien child is



1 placed with any person or entity other than a  
2 parent or legal guardian, and subsequent to  
3 that placement a parent or legal guardian seeks  
4 to establish custody, the Director shall—

5 (i) assess the suitability of placing the  
6 child with the parent or legal guardian;  
7 and

8 (ii) make a written determination on  
9 the child's placement within 30 days.

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

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

20 (ii) limit any right or remedy under  
21 such international agreement.

22 (4) PROTECTION FROM SMUGGLERS AND TRAF-  
23 FICKERS.—

24 (A) POLICIES AND PROGRAMS.—

1 (i) IN GENERAL.—The Director shall  
2 establish policies and programs to ensure  
3 that unaccompanied alien children are pro-  
4 tected from smugglers, traffickers, or other  
5 persons seeking to victimize or otherwise  
6 engage such children in criminal, harmful,  
7 or exploitative activity.

8 (ii) WITNESS PROTECTION PROGRAMS  
9 INCLUDED.—Programs established pursu-  
10 ant to clause (i) may include witness pro-  
11 tection programs.

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

21 (C) DISCIPLINARY ACTION.—Any officer or  
22 employee of the Office or the Department of  
23 Homeland Security, and any grantee or con-  
24 tractor of the Office, who suspects an attorney  
25 of involvement in any activity described in sub-

1 paragraph (A) shall report the individual to the  
2 State bar association of which the attorney is a  
3 member, or to other appropriate disciplinary  
4 authorities, for appropriate disciplinary action,  
5 which may include private or public admonition  
6 or censure, suspension, or disbarment of the at-  
7 torney from the practice of law.

8 (5) GRANTS AND CONTRACTS.—The Director  
9 may award grants to, and enter into contracts with,  
10 voluntary agencies to carry out this section or sec-  
11 tion 462 of the Homeland Security Act of 2002 (6  
12 U.S.C. 279).

13 (6) REIMBURSEMENT OF STATE EXPENSES.—  
14 The Director may reimburse States for any expenses  
15 they incur in providing assistance to unaccompanied  
16 alien children who are served pursuant to this Act  
17 or section 462 of the Homeland Security Act of  
18 2002 (6 U.S.C. 279).

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

1 (c) REQUIRED DISCLOSURE.—The Secretary of  
2 Health and Human Services or the Secretary of Homeland  
3 Security shall provide the information furnished under  
4 this section, and any other information derived from such  
5 furnished information, to—

6 (1) a duly recognized law enforcement entity in  
7 connection with an investigation or prosecution of an  
8 offense described in paragraph (2) or (3) of section  
9 212(a) of the Immigration and Nationality Act (8  
10 U.S.C. 1182(a)), when such information is requested  
11 in writing by such entity; or

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

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

19 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**  
20 **UNACCOMPANIED ALIEN CHILDREN.**

21 (a) STANDARDS FOR PLACEMENT.—

22 (1) PROHIBITION OF DETENTION IN CERTAIN  
23 FACILITIES.—Except as provided in paragraph (2),  
24 an unaccompanied alien child shall not be placed in

1 an adult detention facility or a facility housing delin-  
2 quent children.

3 (2) DETENTION IN APPROPRIATE FACILITIES.—

4 An unaccompanied alien child who has exhibited a  
5 violent or criminal behavior that endangers others  
6 may be detained in conditions appropriate to such  
7 behavior in a facility appropriate for delinquent chil-  
8 dren.

9 (3) STATE LICENSURE.—A child shall not be  
10 placed with an entity described in section  
11 102(a)(1)(E), unless the entity is licensed by an ap-  
12 propriate State agency to provide residential, group,  
13 child welfare, or foster care services for dependent  
14 children.

15 (4) CONDITIONS OF DETENTION.—

16 (A) IN GENERAL.—The Director and the  
17 Secretary of Homeland Security shall promul-  
18 gate regulations incorporating standards for  
19 conditions of detention in such placements that  
20 provide for—

21 (i) educational services appropriate to  
22 the child;

23 (ii) medical care;

- 1 (iii) mental health care, including  
2 treatment of trauma, physical and sexual  
3 violence, or abuse;
- 4 (iv) access to telephones;
- 5 (v) access to legal services;
- 6 (vi) access to interpreters;
- 7 (vii) supervision by professionals  
8 trained in the care of children, taking into  
9 account the special cultural, linguistic, and  
10 experiential needs of children in immigra-  
11 tion proceedings;
- 12 (viii) recreational programs and activi-  
13 ties;
- 14 (ix) spiritual and religious needs; and  
15 (x) dietary needs.

16 (B) NOTIFICATION OF CHILDREN.—Regu-  
17 lations promulgated under subparagraph (A)  
18 shall provide that all children are notified of  
19 such standards orally and in writing in the  
20 child’s native language.

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

- 24 (1) shackling, handcuffing, or other restraints  
25 on children;

1 (2) solitary confinement; or

2 (3) pat or strip searches.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion shall be construed to supersede procedures favoring  
5 release of children to appropriate adults or entities or  
6 placement in the least secure setting possible, as defined  
7 in the Stipulated Settlement Agreement under Flores v.  
8 Reno.

9 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
10 **DREN.**

11 (a) **COUNTRY CONDITIONS.**—

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

20 (2) **ASSESSMENT OF CONDITIONS.**—

21 (A) **IN GENERAL.**—The annual Country  
22 Reports on Human Rights Practices published  
23 by the Department of State shall contain an as-  
24 sessment of the degree to which each country

1 protects children from smugglers and traf-  
2 fickers.

3 (B) FACTORS FOR ASSESSMENT.—The De-  
4 partment shall consult the Country Reports on  
5 Human Rights Practices and the Trafficking in  
6 Persons Report in assessing whether to repa-  
7 triate an unaccompanied alien child to a par-  
8 ticular country.

9 (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
10 ALIEN CHILDREN.—

11 (1) IN GENERAL.—Not later than 18 months  
12 after the date of enactment of this Act, and annually  
13 thereafter, the Secretary shall submit a report to the  
14 Committee on the Judiciary of the Senate and the  
15 Committee on the Judiciary of the House of Rep-  
16 resentatives on efforts to repatriate unaccompanied  
17 alien children.

18 (2) CONTENTS.—The report submitted under  
19 paragraph (1) shall include—

20 (A) the number of unaccompanied alien  
21 children ordered removed and the number of  
22 such children actually removed from the United  
23 States;

24 (B) a description of the type of immigra-  
25 tion relief sought and denied to such children;



1 (C) a statement of the nationalities, ages,  
2 and gender of such children;

3 (D) a description of the procedures used to  
4 effect the removal of such children from the  
5 United States;

6 (E) a description of steps taken to ensure  
7 that such children were safely and humanely re-  
8 patriated to their country of origin; and

9 (F) any information gathered in assess-  
10 ments of country and local conditions pursuant  
11 to subsection (a)(2).

12 **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**  
13 **ALIEN CHILD.**

14 (a) PROCEDURES.—

15 (1) IN GENERAL.—The Director shall develop  
16 procedures, in consultation with the Secretary, to  
17 make a prompt determination of the age of an alien,  
18 to be used—

19 (A) by the Department, with respect to  
20 aliens in the custody of the Department; and

21 (B) by the Office, with respect to aliens in  
22 the custody of the Office.

23 (2) EVIDENCE.—The procedures developed  
24 under paragraph (1) shall—

1           (A) permit the presentation of multiple  
2 forms of evidence, including testimony of the  
3 alien, to determine the age of the unaccom-  
4 panied alien for purposes of placement, custody,  
5 parole, and detention; and

6           (B) allow the appeal of a determination to  
7 an immigration judge.

8           (b) PROHIBITION ON SOLE MEANS OF DETERMINING  
9 AGE.—Radiographs or the attestation of an alien shall not  
10 be used as the sole means of determining age for the pur-  
11 poses of determining an alien’s eligibility for treatment  
12 under this Act or section 462 of the Homeland Security  
13 Act of 2002 (6 U.S.C. 279).

14           (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
15 tion shall be construed to place the burden of proof in  
16 determining the age of an alien on the Government.

17 **SEC. 106. EFFECTIVE DATE.**

18           This title shall take effect on the date which is 90  
19 days after the date of enactment of this Act.

1 **TITLE II—ACCESS BY UNACCOM-**  
2 **PANIED ALIEN CHILDREN TO**  
3 **CHILD ADVOCATES AND**  
4 **COUNSEL**

5 **SEC. 201. CHILD ADVOCATES.**

6 (a) ESTABLISHMENT OF CHILD ADVOCATE PRO-  
7 GRAM.—

8 (1) APPOINTMENT.—The Director may appoint  
9 a child advocate, who meets the qualifications de-  
10 scribed in paragraph (2), for an unaccompanied  
11 alien child. The Director is encouraged, wherever  
12 practicable, to contract with a voluntary agency for  
13 the selection of an individual to be appointed as a  
14 child advocate under this paragraph.

15 (2) QUALIFICATIONS OF CHILD ADVOCATE.—

16 (A) IN GENERAL.—No person shall serve  
17 as a child advocate unless such person—

18 (i) is a child welfare professional or  
19 other individual who has received training  
20 in child welfare matters; and

21 (ii) possesses special training on the  
22 nature of problems encountered by unac-  
23 companied alien children.

24 (B) PROHIBITION.—A child advocate shall  
25 not be an employee of the Department, the Of-

1            fice, or the Executive Office for Immigration  
2            Review.

3            (3) DUTIES.—The child advocate shall—

4                    (A) conduct interviews with the child in a  
5            manner that is appropriate, taking into account  
6            the child’s age;

7                    (B) investigate the facts and circumstances  
8            relevant to the child’s presence in the United  
9            States, including facts and circumstances—

10                    (i) arising in the country of the child’s  
11            nationality or last habitual residence; and

12                    (ii) arising subsequent to the child’s  
13            departure from such country;

14                    (C) work with counsel to identify the  
15            child’s eligibility for relief from removal or vol-  
16            untary departure by sharing with counsel infor-  
17            mation collected under subparagraph (B);

18                    (D) develop recommendations on issues  
19            relative to the child’s custody, detention, re-  
20            lease, and repatriation;

21                    (E) take reasonable steps to ensure that—

22                    (i) the best interests of the child are  
23            promoted while the child participates in, or  
24            is subject to, proceedings or matters under

1 the Immigration and Nationality Act (8  
2 U.S.C. 1101 et seq.);

3 (ii) the child understands the nature  
4 of the legal proceedings or matters and de-  
5 terminations made by the court, and that  
6 all information is conveyed to the child in  
7 an age-appropriate manner; and

8 (F) report factual findings relating to—

9 (i) information collected under sub-  
10 paragraph (B);

11 (ii) the care and placement of the  
12 child during the pendency of the pro-  
13 ceedings or matters; and

14 (iii) any other information collected  
15 under subparagraph (D).

16 (4) TERMINATION OF APPOINTMENT.—The  
17 child advocate shall carry out the duties described in  
18 paragraph (3) until the earliest of the date on  
19 which—

20 (A) those duties are completed;

21 (B) the child departs the United States;

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

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

1 (E) the child is placed in the custody of a  
2 parent or legal guardian.

3 (5) POWERS.—The child advocate—

4 (A) shall have reasonable access to the  
5 child, including access while such child is being  
6 held in detention or in the care of a foster fam-  
7 ily;

8 (B) shall be permitted to review all records  
9 and information relating to such proceedings  
10 that are not deemed privileged or classified;

11 (C) may seek independent evaluations of  
12 the child;

13 (D) shall be notified in advance of all hear-  
14 ings or interviews involving the child that are  
15 held in connection with proceedings or matters  
16 under the Immigration and Nationality Act (8  
17 U.S.C. 1101 et seq.), and shall be given a rea-  
18 sonable opportunity to be present at such hear-  
19 ings or interviews;

20 (E) shall be permitted to consult with the  
21 child during any hearing or interview involving  
22 such child; and

23 (F) shall be provided at least 24 hours ad-  
24 vance notice of a transfer of that child to a dif-  
25 ferent placement, absent compelling and un-

1 usual circumstances warranting the transfer of  
2 such child before such notification.

3 (b) TRAINING.—

4 (1) IN GENERAL.—The Director shall provide  
5 professional training for all persons serving as  
6 guardians ad litem under this section.

7 (2) TRAINING TOPICS.—The training provided  
8 under paragraph (1) shall include training in—

9 (A) the circumstances and conditions that  
10 unaccompanied alien children face; and

11 (B) various immigration benefits for which  
12 such alien child might be eligible.

13 (c) PILOT PROGRAM.—

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

18 (2) PURPOSE.—The purpose of the pilot pro-  
19 gram established under paragraph (1) is to—

20 (A) study and assess the benefits of pro-  
21 viding guardians ad litem to assist unaccom-  
22 panied alien children involved in immigration  
23 proceedings or matters;

1           (B) assess the most efficient and cost-ef-  
2           fective means of implementing the child advo-  
3           cate provisions in this section; and

4           (C) assess the feasibility of implementing  
5           such provisions on a nationwide basis for all un-  
6           accompanied alien children in the care of the  
7           Office.

8           (3) SCOPE OF PROGRAM.—

9           (A) SELECTION OF SITE.—The Director  
10          shall select 3 sites in which to operate the pilot  
11          program established under paragraph (1).

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

17          (4) REPORT TO CONGRESS.—Not later than 1  
18          year after the date on which the first pilot program  
19          site is established under paragraph (1), the Director  
20          shall submit a report on the achievement of the pur-  
21          poses described in paragraph (2) to the Committee  
22          on the Judiciary of the Senate and the Committee  
23          on the Judiciary of the House of Representatives.

24       **SEC. 202. COUNSEL.**

25          (a) ACCESS TO COUNSEL.—



1           (1) IN GENERAL.—The Director should ensure,  
2           to the extent practicable that all unaccompanied  
3           alien children in the custody of the Office or the De-  
4           partment, who are not described in section  
5           101(a)(2), have competent counsel to represent them  
6           in immigration proceedings or matters.

7           (2) PRO BONO REPRESENTATION.—To the max-  
8           imum extent practicable, the Director should—

9                   (A) make every effort to utilize the services  
10                  of competent pro bono counsel who agree to  
11                  provide representation to such children without  
12                  charge; and

13                   (B) ensure that placements made under  
14                  subparagraphs (D), (E), and (F) of section  
15                  102(a)(1) are in cities where there is a dem-  
16                  onstrated capacity for competent pro bono rep-  
17                  resentation.

18           (3) DEVELOPMENT OF NECESSARY INFRA-  
19           STRUCTURES AND SYSTEMS.—For purposes of this  
20           subsection, the Director shall develop the necessary  
21           mechanisms to identify entities available to provide  
22           such legal assistance and representation and to re-  
23           cruit such entities.

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

1 (A) IN GENERAL.—The Director shall  
2 enter into contracts with, or award grants to,  
3 nonprofit agencies with relevant expertise in the  
4 delivery of immigration-related legal services to  
5 children in order to carry out the responsibil-  
6 ities of this Act, including providing legal ori-  
7 entation, screening cases for referral, recruiting,  
8 training, and overseeing pro bono attorneys.

9 (B) SUBCONTRACTING.—Nonprofit agen-  
10 cies may enter into subcontracts with, or award  
11 grants to, private voluntary agencies with rel-  
12 evant expertise in the delivery of immigration-  
13 related legal services to children in order to  
14 carry out this subsection.

15 (C) CONSIDERATIONS REGARDING GRANTS  
16 AND CONTRACTS.—In awarding grants and en-  
17 tering into contracts with agencies under this  
18 paragraph, the Director shall take into consid-  
19 eration the capacity of the agencies in question  
20 to properly administer the services covered by  
21 such grants or contracts without an undue con-  
22 flict of interest.

23 (5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—  
24

1           (A) DEVELOPMENT OF GUIDELINES.—The  
2           Executive Office for Immigration Review, in  
3           consultation with voluntary agencies and na-  
4           tional experts, shall develop model guidelines  
5           for the legal representation of alien children in  
6           immigration proceedings. Such guidelines shall  
7           be based on the children’s asylum guidelines,  
8           the American Bar Association Model Rules of  
9           Professional Conduct, and other relevant do-  
10          mestic or international sources.

11          (B) PURPOSE OF GUIDELINES.—The  
12          guidelines developed under subparagraph (A)  
13          shall be designed to help protect each child  
14          from any individual suspected of involvement in  
15          any criminal, harmful, or exploitative activity  
16          associated with the smuggling or trafficking of  
17          children, while ensuring the fairness of the re-  
18          moval proceeding in which the child is involved.

19          (C) IMPLEMENTATION.—The Executive  
20          Office for Immigration Review shall adopt the  
21          guidelines developed under subparagraph (A)  
22          and submit the guidelines for adoption by na-  
23          tional, State, and local bar associations.

24          (b) DUTIES.—Counsel under this section shall—

1           (1) represent the unaccompanied alien child in  
2 all proceedings and matters relating to the immigra-  
3 tion status of the child or other actions involving the  
4 Department;

5           (2) appear in person for all individual merits  
6 hearings before the Executive Office for Immigration  
7 Review and interviews involving the Department;  
8 and

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

12       (c) ACCESS TO CHILD.—

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

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

24       (d) NOTICE TO COUNSEL DURING IMMIGRATION  
25 PROCEEDINGS.—



1 tigation or prosecution in which the child is a victim or  
2 witness.

3 (b) DEFINITION.—In subsection (a), the term “inter-  
4 fere with” shall include—

5 (1) restricting access to a victim or witness;

6 (2) encouraging noncooperation with Federal  
7 investigators or prosecutors; and

8 (3) being present during interviews of the child  
9 by Federal investigators or prosecutors without the  
10 permission of the investigators or prosecutors.

11 **SEC. 204. EFFECTIVE DATE; APPLICABILITY.**

12 (a) EFFECTIVE DATE.—This title shall take effect  
13 180 days after the date of enactment of this Act.

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

17 **TITLE III—STRENGTHENING**  
18 **POLICIES FOR PERMANENT**  
19 **PROTECTION OF ALIEN CHIL-**  
20 **DREN**

21 **SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.**

22 (a) J CLASSIFICATION.—Section 101(a)(27)(J) of  
23 the Immigration and Nationality Act (8 U.S.C.  
24 1101(a)(27)(J)) is amended to read as follows:

1           “(J) an immigrant, who is 18 years of age or  
2 younger on the date of application for the classifica-  
3 tion and who is present in the United States—

4           “(i) who by a court order supported by  
5 written findings of fact, which shall be binding  
6 on the Secretary of Homeland Security for pur-  
7 poses of adjudications under this subparagraph,  
8 was declared dependent on a juvenile court lo-  
9 cated in the United States or has been legally  
10 committed to, or placed under the custody of,  
11 a department or agency of a State, or an indi-  
12 vidual or entity appointed by a State or juvenile  
13 court located in the United States, and who has  
14 been deemed eligible by that court for long-term  
15 foster care due to abuse, neglect, abandonment,  
16 or a similar basis found under State law;

17           “(ii) for whom it has been determined by  
18 written findings of fact in administrative or ju-  
19 dicial proceedings that it would not be in the  
20 alien’s best interest to be returned to the alien’s  
21 or parent’s previous country of nationality or  
22 country of last habitual residence; and

23           “(iii) with respect to a child in Federal  
24 custody, for whom the Office of Refugee Reset-  
25 tlement of the Department of Health and

1 Human Services has certified to the Director of  
2 U.S. Citizenship and Immigration Services that  
3 the classification of an alien as a special immi-  
4 grant under this subparagraph has not been  
5 made solely to provide an immigration benefit  
6 to that alien,

7 except that no natural parent or prior adoptive par-  
8 ent of any alien provided special immigrant status  
9 under this subparagraph shall thereafter, by virtue  
10 of such parentage, be accorded any right, privilege,  
11 or status under this Act;”.

12 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A)  
13 of the Immigration and Nationality Act (8 U.S.C.  
14 1255(h)(2)(A)) is amended to read as follows:

15 “(A) paragraphs (4), (5)(A), (6)(A),  
16 (7)(A), 9(B), and 9(C)(i)(I) of section 212(a)  
17 shall not apply; and”.

18 (c) ELIGIBILITY FOR ASSISTANCE.—A child who has  
19 been granted relief under section 101(a)(27)(J) of the Im-  
20 migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),  
21 may be eligible for funds made available under section  
22 412(d) of that Act (8 U.S.C. 1522(d)) until such time as  
23 the child attains the age designated in section  
24 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or



1 until the child is placed in a permanent adoptive home,  
 2 whichever occurs first.

3 (d) **TRANSITION RULE.**—Notwithstanding any other  
 4 provision of law, any child described in section  
 5 101(a)(27)(J) of the Immigration and Nationality Act (8  
 6 U.S.C. 1101(a)(27)(J)) who filed an application for spe-  
 7 cial immigrant juvenile classification before the date of en-  
 8 actment of this Act and who was 19, 20, or 21 years of  
 9 age on the date such application was filed shall not be  
 10 denied such classification after the date of enactment of  
 11 this Act because of such alien’s age.

12 **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**  
 13 **PARTIES WHO COME INTO CONTACT WITH**  
 14 **UNACCOMPANIED ALIEN CHILDREN.**

15 (a) **TRAINING OF STATE AND LOCAL OFFICIALS AND**  
 16 **CERTAIN PRIVATE PARTIES.**—

17 (1) **IN GENERAL.**—The Secretary of Health and  
 18 Human Services, acting jointly with the Secretary,  
 19 shall provide appropriate training materials, and if  
 20 requested, direct training, to State and county offi-  
 21 cials, child welfare specialists, teachers, public coun-  
 22 sel, and juvenile judges who come into contact with  
 23 unaccompanied alien children.

24 (2) **CURRICULUM.**—The training shall provide  
 25 education on the processes pertaining to unaccom-

1       panied alien children with pending immigration sta-  
2       tus and on the forms of relief potentially available.  
3       The Director shall be responsible for establishing a  
4       core curriculum that can be incorporated into edu-  
5       cation, training, or orientation modules or formats  
6       that are currently used by these professionals.

7               (3) VIDEO CONFERENCING.—If direct training  
8       is requested under this subsection, such training  
9       may be conducted through video conferencing.

10       (b) TRAINING OF DEPARTMENT PERSONNEL.—The  
11       Secretary, acting jointly with the Secretary of Health and  
12       Human Services, shall provide specialized training to all  
13       personnel of the Department who come into contact with  
14       unaccompanied alien children. Training for Border Patrol  
15       agents and immigration inspectors shall include specific  
16       training on identifying children at the United States bor-  
17       ders or at United States ports of entry who have been  
18       victimized by smugglers or traffickers, and children for  
19       whom asylum or special immigrant relief may be appro-  
20       priate, including children described in section 101(a)(2).

21       **SEC. 303. REPORT.**

22       Not later than 1 year after the date of enactment  
23       of this Act, and annually thereafter, the Secretary of  
24       Health and Human Services shall submit a report for the  
25       previous fiscal year to the Committee on the Judiciary of

1 the Senate and the Committee on the Judiciary of the  
2 House of Representatives that contains—

3 (1) data related to the implementation of sec-  
4 tion 462 of the Homeland Security Act (6 U.S.C.  
5 279);

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

8 (3) data regarding the provision of child advo-  
9 cate and counsel services under this Act; and

10 (4) any other information that the Director or  
11 the Secretary of Health and Human Services deter-  
12 mines to be appropriate.

13 **SEC. 304. EFFECTIVE DATE.**

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

17 **TITLE IV—CHILDREN REFUGEE**  
18 **AND ASYLUM SEEKERS**

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

20 (a) SENSE OF CONGRESS.—Congress—

21 (1) commends the former Immigration and  
22 Naturalization Service for its issuance of its “Guide-  
23 lines for Children’s Asylum Claims”, dated Decem-  
24 ber 1998, and encourages and supports the imple-  
25 mentation of such guidelines by the Department in

1 an effort to facilitate the handling of children’s af-  
2 firmative asylum claims;

3 (2) commends the Executive Office for Immi-  
4 gration Review of the Department of Justice for its  
5 issuance of its “Guidelines for Immigration Court  
6 Cases Involving Unaccompanied Alien Children”,  
7 dated September 2004, and encourages and supports  
8 the continued implementation of such guidelines by  
9 the Executive Office for Immigration Review in its  
10 handling of children’s asylum claims before immigra-  
11 tion judges; and

12 (3) understands that the guidelines described in  
13 paragraph (2) do not specifically address the issue  
14 of asylum claims, but go to the broader issue of un-  
15 accompanied alien children in general.

16 (b) TRAINING.—

17 (1) IMMIGRATION OFFICERS.—The Secretary  
18 shall provide periodic comprehensive training under  
19 the “Guidelines for Children’s Asylum Claims” to  
20 asylum officers and immigration officers who have  
21 contact with children in order to familiarize and sen-  
22 sitize such officers to the needs of children asylum  
23 seekers.

24 (2) IMMIGRATION JUDGES.—The Executive Of-  
25 fice for Immigration Review shall—

1 (A) provide periodic comprehensive train-  
2 ing under the “Guidelines for Immigration  
3 Court Cases Involving Unaccompanied Alien  
4 Children” and the “Guidelines for Children’s  
5 Asylum Claims” to immigration judges and  
6 members of the Board of Immigration Appeals;  
7 and

8 (B) redistribute to all Immigration Courts  
9 the “Guidelines for Children’s Asylum Claims”  
10 as part of its training of immigration judges.

11 (3) USE OF VOLUNTARY AGENCIES.—Voluntary  
12 agencies shall be allowed to assist in the training de-  
13 scribed in this subsection.

14 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

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

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

21 (2) by inserting after paragraph (2) the fol-  
22 lowing:

23 “(3) An analysis of the worldwide situation  
24 faced by unaccompanied refugee children, by region,  
25 which shall include an assessment of—

1           “(A) the number of unaccompanied refugee  
2 children, by region;

3           “(B) the capacity of the Department of  
4 State to identify such refugees;

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

7           “(D) the capacity of the voluntary agency  
8 community to resettle such refugees in the  
9 United States;

10           “(E) the degree to which the United States  
11 plans to resettle such refugees in the United  
12 States in the coming fiscal year; and

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

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

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

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

1 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
 2 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
 3 **CUMSTANCES.**

4 (a) **PLACEMENT IN REMOVAL PROCEEDINGS.**—Any  
 5 unaccompanied alien child apprehended by the Depart-  
 6 ment, except for an unaccompanied alien child subject to  
 7 exceptions under paragraph (1)(A) or (2) of section  
 8 (101)(a), shall be placed in removal proceedings under sec-  
 9 tion 240 of the Immigration and Nationality Act (8 U.S.C.  
 10 1229a).

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

15 “(E) **APPLICABILITY.**—Subparagraphs (A)  
 16 and (B) shall not apply to an unaccompanied  
 17 alien child as defined in section 101(a)(51).”.

18 **TITLE V—AUTHORIZATION OF**  
 19 **APPROPRIATIONS**

20 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) **IN GENERAL.**—There are authorized to be appro-  
 22 priated to the Department of Homeland Security, the De-  
 23 partment of Justice, and the Department of Health and  
 24 Human Services, such sums as may be necessary to carry  
 25 out—

1 (1) the provisions of section 462 of the Home-  
 2 land Security Act of 2002 (6 U.S.C. 279); and

3 (2) the provisions of this Act.

4 (b) AVAILABILITY OF FUNDS.—Amounts appro-  
 5 priated pursuant to subsection (a) shall remain available  
 6 until expended.

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

10 **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**  
 11 **THE OFFICE OF REFUGEE RESETTLEMENT**  
 12 **WITH RESPECT TO UNACCOMPANIED ALIEN**  
 13 **CHILDREN.**

14 (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-  
 15 TOR.—Section 462(b)(1) of the Homeland Security Act of  
 16 2002 (6 U.S.C. 279(b)(1)) is amended—

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

19 (2) in subparagraph (L), by striking the period  
 20 at the end and inserting “, including regular follow-  
 21 up visits to such facilities, placements, and other en-  
 22 tities, to assess the continued suitability of such  
 23 placements; and”;

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



1           “(M) ensuring minimum standards of care  
2           for all unaccompanied alien children—

3                   “(i) for whom detention is necessary;  
4                   and

5                   “(ii) who reside in settings that are  
6                   alternative to detention.”.

7           (b) ADDITIONAL POWERS OF THE DIRECTOR.—Sec-  
8           tion 462(b) of the Homeland Security Act of 2002 (6  
9           U.S.C. 279(b)) is amended by adding at the end the fol-  
10          lowing:

11                   “(4) AUTHORITY.—In carrying out the duties  
12           under paragraph (3), the Director is authorized to—

13                   “(A) contract with service providers to per-  
14                   form the services described in sections 102,  
15                   103, 201, and 202 of the Unaccompanied Alien  
16                   Child Protection Act of 2005; and

17                   “(B) compel compliance with the terms  
18                   and conditions set forth in section 103 of the  
19                   Unaccompanied Alien Child Protection Act of  
20                   2005, including the power to—

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

23                   “(ii) terminate the contracts of pro-  
24                   viders that are not in compliance with such  
25                   conditions; and

1                   “(iii) reassign any unaccompanied  
2                   alien child to a similar facility that is in  
3                   compliance with such section.”.

4 **SEC. 602. TECHNICAL CORRECTIONS.**

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

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

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

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

15 **SEC. 603. EFFECTIVE DATE.**

16           The amendments made by this title shall take effect  
17 as if included in the Homeland Security Act of 2002 (6  
18 U.S.C. 101 et seq.).

          Passed the Senate December 22 (legislative day, De-  
          cember 21), 2005.

          Attest:

*Secretary.*

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**S. 119**

**AN ACT**

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