To reduce the ability of U.S. Immigration and Customs Enforcement to engage in inappropriate civil immigration enforcement actions that harm unaccompanied alien children and to ensure the safety and welfare of unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2018

Ms. Harris (for herself, Mr. Wyden, Mrs. Feinstein, Mr. Blumenthal, Mrs. Gillibrand, Mr. Sanders, and Mr. Markey) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reduce the ability of U.S. Immigration and Customs Enforcement to engage in inappropriate civil immigration enforcement actions that harm unaccompanied alien children and to ensure the safety and welfare of unaccompanied alien children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Families, Not Facilities Act of 2018”.
SEC. 2. FINDINGS.

Congress makes the following findings:


(2) U.S. Immigration and Customs Enforcement is using information obtained under the Memorandum of Agreement to conduct civil immigration enforcement actions against individuals residing in the homes of prospective sponsors of unaccompanied alien children.

(3) These civil immigration enforcement actions have discouraged prospective sponsors of unaccompanied alien children, including family members, from coming forward to resettle children in the community as they pursue lawful claims for humanitarian protection.

(4) As a result of the lack of qualified sponsors, unprecedented numbers of unaccompanied alien chil-
dren (nearly 13,400 as of October 2018) are being held in shelters overseen by the Office of Refugee Resettlement as of the date of enactment of this Act.

(5) The Office of Refugee Resettlement is struggling to accommodate the growing number of unaccompanied alien children in its shelter network and announced, in September 2018, that it would more than triple the number of beds in a temporary “emergency influx” shelter at the Tornillo-Guadalupe Land Port of Entry in Texas.

(6) Temporary shelters, such as Tornillo, a facility that the New York Times and other media sources describe as a “tent city”, are inappropriate locations to hold unaccompanied alien children because such shelters—

(A) have reduced standards of care, including insufficient educational services;

(B) offer limited access to clinical and legal services; and

(C) are not cost-effective, resulting in the expenditure of more than $750 per day in taxpayer funds for each child housed in Tornillo shelter.

(7) Facilities operated under a contract with the Office of Refugee Resettlement have faced unac-
ceptable allegations of abuse and neglect of unac-
accompanied alien children that merit additional inves-
tigation and oversight.

(8) The Office of Refugee Resettlement is le-
gally required to place children in the least restric-
tive setting that is in the best interest of the child.

(9) Services offered at facilities funded by the
Office of Refugee Resettlement are required to in-
clude classroom education, mental and medical
health services, case management, socialization and
recreation activities, and family reunification serv-
ices that facilitate the safe and timely release of un-
accompanied alien children to family members or
other sponsors that can care for them.

(10) Providing legal and case management serv-
ices to all children while they are housed in a facility
funded by the Office of Refugee Resettlement and
after their release from such a facility is a cost-effec-
tive and humane way of ensuring that the Office of
Refugee Resettlement meets its statutory obligation
to place children in least restrictive settings.

SEC. 3. USE OF SPONSORSHIP INFORMATION.

(a) IN GENERAL.—Section 235(e)(3) of the William
Wilberforce Trafficking Victims Protection Reauthoriza-
tion Act of 2008 (8 U.S.C. 1232(e)(3)) is amended—
(1) in subparagraph (A), by inserting “In making such a determination, the Secretary may not consider the immigration status of the proposed custodian.” after “well-being.”; and

(2) by adding at the end the following:

“(D) Prohibiting use of certain information.—The Secretary of Homeland Security may not use information provided by an unaccompanied alien child or information initially obtained by the Secretary of Health and Human Services to make a suitability determination under subparagraph (A), a home study determination under subparagraph (B), or a secure facility determination under paragraph (2)(A) for the purpose of apprehending, detaining, or removing from the United States—

“(i) the unaccompanied alien child;

“(ii) the proposed custodian or current custodian;

“(iii) a resident of the home in which the proposed custodian or current custodian resides;

“(iv) the proposed sponsor or current sponsor; or
“(v) a resident of the home in which
the proposed sponsor or current sponsor
resides.”.

(b) Rules of Construction.—

(1) Flores Settlement Agreement.—The
amendments made by subsection (a) may not be con-
strued to supersede the terms of the stipulated set-
tlement agreement filed on January 17, 1997, in the
United States District Court for the Central District
of California in Flores v. Reno, CV 85–4544–RJK,
(commonly known as the “Flores settlement agree-
ment”).

(2) Child Welfare.—The amendments made
by subsection (a) may not be construed to prevent
the Secretary of Homeland Security from using in-
formation obtained by the Secretary of Health and
Human Services to investigate or report to the ap-
propriate law enforcement agency or child welfare
agency instances of trafficking, abuse, or neglect.

SEC. 4. LIMITATION ON USE OF FUNDS FOR ENFORCE-
MENT, DETENTION, AND REMOVAL OPER-
ATIONS.

No Federal funds may be used by U.S. Immigration
and Customs Enforcement for any enforcement, detention,
or removal activity that violates section 235(c)(3) of the
William Wilberforce Trafficking Victims Protection Reau-
thorization Act of 2008, as amended by section 3(a).

SEC. 5. TRANSFER OF U.S. IMMIGRATION AND CUSTOMS EN-
FORCEMENT FUNDING.

Of the amount appropriated for fiscal year 2019 to
U.S. Immigration and Customs Enforcement for enforce-
ment and removal operations—

(1) $30,000,000 shall be transferred to the De-
partment of Justice to expand the efforts of the
Federal Bureau of Investigation’s Violent Crimes
Against Children program to investigate criminal
networks involved in child trafficking;

(2) $180,000,000 shall be transferred to the
Office of Refugee Resettlement to provide the post-
release legal, case management, and child advocate
services described in section 6; and

(3) $10,000,000 shall be transferred to the Ad-
ministration for Children and Families to bolster the
efforts of the Task Force to Prevent and End
Human Trafficking.

SEC. 6. ENSURING THE SAFETY OF UNACCOMPANIED
ALIEN CHILDREN.

(a) DEFINED TERM.—In this section, the term “post-
release case management services” means services that—
(1) are provided by a social worker, employed
by a nonprofit entity, who meets with the child indi-
vidually and with the family to develop an individ-
ualized service plan; and

(2) allow children to successfully transition into
their communities by—

(A) assisting with school enrollment and
acculturation;

(B) locating medical and therapeutic serv-
ices;

(C) making referrals to area legal services;

and

(D) navigating new family settings and
other individual needs.

(b) REQUIRED SERVICES.—The Office of Refugee
Resettlement shall—

(1) provide post-release case management to all
children upon release or as the need arises for the
duration of their immigration proceedings; and

(2) facilitate efforts to connect every unaccomp-
panied child, including each child with a sponsor,
with legal representation for his or her immigration
proceedings.
(c) The Office of Refugee Resettlement Advisory Committee on Shelters for Unaccompanied Alien Children.—

(1) Establishment.—The Secretary of Health and Human Services, in compliance with the Federal Advisory Committee Act (5 U.S.C. App.), shall immediately establish the Advisory Committee on Shelters for Unaccompanied Alien Children (referred to in this subsection as the "Advisory Committee") to advise the Office of Refugee Resettlement on matters regarding shelters and placements for unaccompanied alien children relating to education, immigration law, physical and mental health, trauma-informed social work services, youth shelter management, and immigration detention reform.

(2) Composition and Term.—

(A) Appointment.—The Secretary shall appoint 14 individuals to serve on the Advisory Committee for 2-year terms.

(B) Prerequisites.—

(i) In General.—Each member of the Advisory Committee shall be employed by a nonprofit entities in the field of—

(I) education;

(II) immigration law;
(III) physical and mental health of children and youth;

(IV) trauma-informed child welfare social work services;

(V) youth shelter management;

(VI) cultural competency; or

(VII) immigration detention reform.

(ii) Representation.—At least 2 members of the Advisory Committee shall represent each of the fields set forth in clause (i).

(3) Investigations Authority.—

(A) Inspections.—Members of the Advisory Committee may conduct unannounced inspections of all shelters contracted with the Office of Refugee Resettlement to hold unaccompanied alien children.

(B) Information Sharing.—The Office of Refugee Resettlement shall provide such information to the Advisory Committee as the Advisory Committee may request, subject to the same confidential use and nondisclosure requirements that apply to the Office of Refugee Resettlement.
(4) CONSULTATIONS.—The Advisory Committee shall consult with, and receive recommendations from—

(A) the American Medical Association;

(B) the American Academy of Pediatrics;

(C) the National Association of Social Workers;

(D) the American Bar Association Center on Children and the Law;

(E) the American Immigration Lawyers Association; and

(F) other medical, child welfare, and legal experts.

(5) REPORTS.—The Advisory Committee shall submit, to the Secretary of Health and Human Services, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on the Judiciary of the Senate, the Committee on Energy and Commerce of the House of Representatives, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on the Judiciary of the House of Representatives—
(A) not later than 6 months after the establishment of the Advisory Committee, an interim report outlining the Advisory Committee’s investigations and recommendations regarding Office of Refugee Resettlement shelters for unaccompanied alien children; and

(B) not later than 1 year after the establishment of the Advisory Committee, a final report outlining the Advisory Committee’s investigations and recommendations regarding Office of Refugee Resettlement shelters for unaccompanied alien children.

(6) SAVINGS PROVISION.—Nothing in this subsection may be construed to preempt any Federal agency from investigating allegations of mistreatment and abuse of unaccompanied alien children in facilities overseen by the Department of Health and Human Services.