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

IN THE SENATE OF THE UNITED STATES

MAY 15, 2019

Mr. GRAHAM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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 “Secure and Protect Act of 2019”.

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SEC. 2. PROTECTION OF MINORS.

(a) PROMOTING FAMILY UNITY.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended by adding at the end the following:

“(j) PROMOTING FAMILY UNITY.—

“(1) DETENTION OF ALIEN MINORS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the Secretary of Homeland Security may detain any alien minor (other than an unaccompanied alien child) who is removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) for not more than 100 days pending the completion of removal proceedings, regardless of whether the alien minor was previously an unaccompanied alien child.

“(B) PRIORITY REMOVAL CASES.—The Director of the Executive Office for Immigration Review shall—

“(i) prioritize the removal proceedings of an alien minor, or a family unit that includes an alien minor, detained under subparagraph (A); and
“(ii) set a case completion goal of not more than 100 days for such proceedings.

“(C) DETENTION AND RELEASE DECISIONS.—The decision to detain or release an alien minor described in subparagraph (A)—

“(i) shall be governed solely by sections 212(d)(5), 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5), 1187, 1225, 1226, and 1231) and implementing regulations or policies; and

“(ii) shall not be governed by standards, requirements, restrictions, or procedures contained in a judicial decree or settlement relating to the authority to detain or release alien minors.

“(2) CONDITIONS OF DETENTION.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the Secretary of Homeland Security shall determine, in the sole discretion of the Secretary, the conditions of detention applicable to an alien minor described in paragraph (1)(A) regardless
of whether the alien minor was previously an
unaccompanied alien child.

“(B) No Judicial review.—A determina-
tion under subparagraph (A) shall not be sub-
ject to judicial review.

“(3) Rule of Construction.—Nothing in
this section—

“(A) affects the eligibility for bond or pa-
role of an alien; or

“(B) limits the authority of a court to hear
a claim arising under the Constitution of the
United States.

“(4) Preemption of State Licensing re-
quivalents.—Notwithstanding any other provision
of law, judicial determination, consent decree, or set-
tlement agreement, a State may not require an im-
migration detention facility used to detain families
consisting of one or more children who have not at-
tained 18 years of age and the parents or legal
guardians of such children, that is located in the
State, to be licensed by the State or any political
subdivision thereof.

“(5) Authorization of Appropriations.—
There are authorized to be appropriated such sums
as may be necessary to carry out this subsection.
“(k) Applicability of Consent Decrees, Settlements, and Judicial Determinations.—

“(1) Flores settlement agreement inapplicable.—Conduct and activity that was, before the date of the enactment of this subsection, subject to a restriction or an obligation imposed by the stipulated settlement 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 agreement’), including any modification of and any judicial determination based on such agreement—

“(A) shall not be subject to such restriction or obligation; and

“(B) shall be subject to the restrictions and obligations under this Act.

“(2) Other settlement agreements or consent decrees.—Any settlement agreement or consent decree relating to the conditions of detention of an alien child shall be consistent with subsection (j).”.

(b) Safe and Prompt Return of Unaccompanied Alien Children.—Section 235(a) of the Wil-
liam Wilberforce Trafficking Victims Protection Reauthor-
ization Act of 2008 (8 U.S.C. 1232(a)) is amended—

(1) in paragraph (2)—

(A) by amending the paragraph heading to
read as follows: “RULES FOR REPATRIATING
UNACCOMPANIED ALIEN CHILDREN”;

(B) in subparagraph (A), in the matter
preceding clause (i), by striking “who is a na-
tional or habitual resident of a country that is
contiguous with the United States shall be
treated in accordance with subparagraph (B)”
and inserting “shall be treated in accordance
with this paragraph or subsection (b), as appli-
cable”; 

(C) in subparagraph (B)—

(i) by redesignating clauses (i) and
(ii) as subclauses (I) and (II), and moving
the subclauses two ems to the right;

(ii) in the matter preceding subclause
(I), as so redesignated, by striking “An im-
migration officer” and inserting the fol-
lowing:

“(i) IN GENERAL.—An immigration
officer”; and
(iii) by adding at the end the following:

“(ii) CHILDREN UNABLE TO MAKE DECISIONS WITH RESPECT TO WITHDRAWAL OF APPLICATIONS FOR ADMISSION.—If at the time of initial apprehension, an immigration officer determines, in the sole and unreviewable discretion of the immigration officer, that an unaccompanied alien child is not able to make an independent decision with respect to the withdrawal of his or her application for admission to the United States, the immigration officer shall refer the unaccompanied alien child for removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

“(iii) CHILDREN ABLE TO MAKE DECISIONS WITH RESPECT TO WITHDRAWAL OF APPLICATIONS FOR ADMISSION.—

“(I) IN GENERAL.—Except as described in subclause (III)(aa), notwithstanding any other provision of law that requires removal proceedings under section 240 of the Immigration
and Nationality Act (8 U.S.C. 1229a), including subparagraph (D) and section 235 of the Immigration and Nationality Act (8 U.S.C. 1225), in the case of an unaccompanied alien child who is able to make an independent decision with respect to the withdrawal of his or her application for admission to the United States, as determined by an immigration officer at the time of initial apprehension, and does not wish to withdraw such application, the immigration officer shall—

“(aa) make a record of any finding of inadmissibility or deportability, which shall be the basis of a repatriation order; and

“(bb) refer the unaccompanied alien child for an interview under subclause (II) to determine whether it is more likely than not that the unaccompanied alien child—

“(AA) will be subjected to trafficking on return to
his or her country of nationality or last habitual residence; and

“(BB) would be granted asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), withholding of removal under section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3)), or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (referred to in this clause as the ‘Convention Against Torture’).

“(II) INTERVIEW.—

“(aa) IN GENERAL.—An interview under subclause (I)(bb) shall be conducted by an immi-
transit officer with specialized
training relating to—

“(AA) applicable law;
“(BB) interviewing
children; and
“(CC) child trafficking.
“(III) Determinations based
on interview.—
“(aa) Removal pro-
cceedings.—An unaccompanied
alien child described in subclause
(I) shall be referred for removal
proceedings under section 240 of
the Immigration and Nationality
Act (8 U.S.C. 1229a) if, based
on an interview under item (bb)
of that subclause, the immigra-
tion officer makes a determina-
tion that it is more likely than
not that the unaccompanied alien
child will be trafficked on return
to his or her country of nation-
ality or last habitual residence.
“(bb) Asylum only deter-
minations.—
“(AA) IN GENERAL.—

If, based on an interview under subclause (I)(bb), the immigration officer makes a determination that it is more likely than not that the claim of an unaccompanied alien child for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), withholding of removal under section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3)), or protection under the Convention Against Torture will be granted, the unaccompanied alien child shall be referred to an immigration judge solely for a determination with respect to whether the unaccompanied alien child is eligible for asylum under section 208 of that Act (8 U.S.C. 1158), withholding of
removal under section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3)), or protection under the Convention Against Torture and, if otherwise eligible for asylum, whether asylum shall be granted in the exercise of discretion.

“(BB) Repatriation.—An unaccompanied alien child referred to an immigration judge under subitem (AA) shall be returned to his or her country of nationality or last habitual residence if the immigration judge finds that the unaccompanied alien child is not entitled to asylum, withholding of removal, or protection under the Convention Against Torture.

“(IV) Discretion of Immigration Officer; No Judicial Re-
VIEW.—A decision of an immigration officer under this clause, and the issuance of a repatriation order, shall be in the sole, unreviewable discretion of the immigration officer.

“(iv) DETENTION DURING PROCEEDINGS.—

“(I) IN GENERAL.—Except as provided in subclause (II), notwithstanding any other provision of law, settlement agreement, or consent decree, an unaccompanied alien child shall not be released from the custody of the Secretary of Homeland Security or the Director of the Office of Refugee Resettlement during the pend-ency of the immigration or removal proceedings of the unaccompanied alien child.

“(II) EXCEPTION.—An unaccompanied alien child may be released in the sole, unreviewable discretion of the Director of the Office of Refugee Resettlement.”; and

(D) in subparagraph (C)—
(i) by amending the subparagraph heading to read as follows: “AGREEMENTS WITH FOREIGN COUNTRIES.—”;
and
(ii) in the matter preceding clause (i), by striking “countries contiguous to the United States” and inserting “Canada, El Salvador, Guatemala, Honduras, Mexico, and any other foreign country the Secretary considers appropriate”;
(2) by striking paragraph (3);
(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and
(4) in paragraph (4)(D), as so redesignated, by striking “from a contiguous country”.

(c) PROTECTING INTEGRITY OF SPECIAL IMMIGRANT JUVENILE VISA PROGRAM.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended—
(1) in clause (i), by striking “, and whose” and all that follows through “State law”; and
(2) in clause (iii)—
(A) in subclause (I), by striking “and” at the end; and
(B) by adding at the end the following:
“(III) an alien may not be granted special immigrant juvenile status under this subparagraph if the reunification of the alien with any parent or legal guardian of the alien is not precluded by abuse, neglect, abandonment, or any similar cause under State law; and

“(IV)(aa) in assessing whether an alien is entitled to special immigrant juvenile status under this subparagraph, the Secretary of Homeland Security shall determine whether an order of dependency issued for purposes of clause (i) was issued by an appropriate court with appropriate jurisdiction; and

“(bb) notwithstanding any other provision of law, no court shall have jurisdiction to review a determination made by the Secretary of Homeland Security under this subclause;”.

SEC. 3. ENDING ABUSE OF ASYLUM SYSTEM.

(a) STANDARDS TO DETER FRAUD AND ADVANCE MERITORIOUS ASYLUM CLAIMS.—Section 235(b)(1)(B) of
the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)) is amended—

(1) by amending clause (v) to read as follows:

“(v) CREDIBLE FEAR OF PERSECUTION.—

“(I) IN GENERAL.—For purposes of this subparagraph, the term ‘credible fear of persecution’ means that it is more likely than not that the alien would be able to establish eligibility for asylum under section 208—

“(aa) taking into account such facts as are known to the officer; and

“(bb) only if the officer has determined, under subsection (b)(1)(B)(iii) of such section, that it is more likely than not that the statements made by the alien or on behalf of the alien are true.

“(II) BARS TO ASYLUM.—An alien shall not be determined to have a credible fear of persecution if the alien is prohibited from applying for
or receiving asylum, including an alien subject to a limitation or condition under subsection (a)(2) or (b)(2) (including a regulation promulgated under such subsection) of section 208.”; and

(2) by adding at the end the following:

“(vi) Eligibility for relief.—

“(I) Credible fear review by immigration judge.—An alien determined to have a credible fear of persecution shall be referred to an immigration judge for review of such determination, which shall be limited to a determination whether the alien—

“(aa) is eligible for asylum under section 208, withholding of removal under section 241(b)(3), or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (referred to in this clause as the
‘Convention Against Torture’;

and

“(bb) merits a grant of asylum in the exercise of discretion.

“(II) ALIENS WITH REASONABLE FEAR OF PERSECUTION.—

“(aa) IN GENERAL.—Except as provided in item (bb), if an alien referred under subparagraph (A)(ii) is determined to have a reasonable fear of persecution, the alien shall be eligible only for consideration of an application for withholding of removal under section 241(b)(3) or protection under the Convention Against Torture.

“(bb) EXCEPTION.—An alien shall not be eligible for consideration of an application for relief under item (aa) if the failure of the alien to establish a credible fear of persecution precludes the alien from eligibility for such relief.
“(cc) LIMITATION.—An alien whose application for relief is adjudicated under item (aa) shall not be eligible for any other form of relief or protection from removal.

“(vii) INELIGIBILITY FOR REMOVAL PROCEEDINGS.—An alien referred under subparagraph (A)(ii) shall not be eligible for a hearing under section 240.”.

(b) APPLICATIONS FOR ASYLUM.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—An alien who has entered the United States through a designated port of entry may apply for asylum under this section or section 235(b), as applicable.”; and

(B) in paragraph (2)(E), by striking “Subparagraphs (A) and (B)” and inserting “Subparagraph (A)”;

and

(2) in subsection (b)(3), by striking subparagraph (C).
(c) Authority for Certain Aliens To Apply for Asylum.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

“(F) Ineligibility for Asylum.—

“(i) In general.—Notwithstanding any other provision of law, including paragraph (1), except as provided in clause (ii), an alien is ineligible for asylum if the alien—

“(I) has been convicted of a felony;

“(II) is inadmissible under section 212(a) (except paragraphs (4), (5), and (7));

“(III) has been previously removed from the United States; or

“(IV) is a national or habitual resident of—

“(aa) a country that has a refugee application and processing center; or

“(bb) a country contiguous to such a country.
“(ii) EXCEPTION.—Notwithstanding clause (i), paragraph (1) applies to any alien who is present in the United States on the date of the enactment of this sub-paragraph.”.

SEC. 4. ESTABLISHMENT OF REFUGEE APPLICATION AND PROCESSING CENTERS.

(1) DEFINITION.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘refugee application and processing center’—

“(A) means a facility designated under section 207(g) by the Secretary of State to accept and process applications for refugee admissions to the United States; and

“(B) may include a United States embassy, consulate, or other diplomatic facility.”.

(2) DESIGNATION.—Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) is amended by adding at the end the following:

“(g) REFUGEE APPLICATION AND PROCESSING CENTERS.—

“(1) DESIGNATION.—Not later than 240 days after the date of the enactment of this subsection,
the Secretary of State, in consultation with the Sec-
retary of Homeland Security, shall designate refugee
application and processing centers outside the
United States.

“(2) LOCATIONS.—The Secretary of State shall
establish—

“(A) 1 refugee application and processing
center in Mexico; and

“(B) not fewer than 3 refugee application
and processing centers in Central America at
locations selected by the Secretary of State, in
consultation with the Secretary of Homeland
Security.

“(3) DUTIES OF SECRETARY OF STATE.—The
Secretary of State, in coordination with the Sec-
retary of Homeland Security, shall ensure that any
alien who is a national or habitual resident of a
country in which a refugee application and proc-
essing center is located, or a country contiguous to
such a country, may apply for refugee status at a
refugee application and processing center.

“(4) ADJUDICATION BY REFUGEE OFFICERS.—
An application for refugee status submitted to a ref-
ugee application and processing center shall be adju-
dicated by a refugee officer.
“(5) PRIORITY.—The Secretary of State shall ensure that refugee application and processing centers accord priority to applications submitted—

“(A) by aliens who have been referred by an authorized nongovernmental organization, as determined by the Secretary of State;

“(B) not later than 90 days after the date on which such referral is made; and

“(C) in accordance with the requirements and procedures established by the Secretary of State under this subsection.

“(6) NUMBER OF REFERRALS AND GRANTS OF ADMISSION FOR REFUGEES.—The admission to the United States of refugees under this subsection shall be subject to the limitations, including the numerical limitations, under this section.

“(7) APPLICATION FEES.—

“(A) IN GENERAL.—The Secretary of State and the Secretary of Homeland Security shall charge, collect, and account for fees prescribed by each such Secretary pursuant to section 9701 of title 31, United States Code, for the purpose of receiving, docketing, processing, and adjudicating an application under this subsection.
“(B) BASIS FOR FEES.—The fees prescribed under subparagraph (A) shall be based on a consideration of the amount necessary to deter frivolous applications and the cost for processing the application, including the implementation of program integrity and anti-fraud measures.”.

SEC. 5. REGULATIONS.

Notwithstanding section 553(b) of title 5, United States Code, not later than 210 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Attorney General shall, jointly or separately, publish in the Federal Register interim final rules to implement the amendments made by section 3(c) and section 4.

SEC. 6. HIRING AUTHORITY.

(a) IMMIGRATION JUDGES.—The Attorney General shall increase—

(1) the number of immigration judges by not fewer than an additional 500 judges, as compared to the number of immigration judges as of the date of the enactment of this Act; and

(2) the corresponding number of support staff, as necessary.
(b) IMMIGRATION AND CUSTOMS ENFORCEMENT ATTORNEYS.—The Director of U.S. Immigration and Customs Enforcement shall increase the number of attorneys and staff employed by U.S. Immigration and Customs Enforcement by the number that is consistent with the workload staffing model to support the increase in immigration judges.