

116TH CONGRESS
1ST SESSION

S. 1494

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.

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.**

4 This Act may be cited as the “Secure and Protect
5 Act of 2019”.

1 **SEC. 2. PROTECTION OF MINORS.**

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

6 “(j) PROMOTING FAMILY UNITY.—

7 “(1) DETENTION OF ALIEN MINORS.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, judicial determination,
10 consent decree, or settlement agreement, the
11 Secretary of Homeland Security may detain any
12 alien minor (other than an unaccompanied alien
13 child) who is removable from the United States
14 under section 237 of the Immigration and Na-
15 tionality Act (8 U.S.C. 1227) for not more than
16 100 days pending the completion of removal
17 proceedings, regardless of whether the alien
18 minor was previously an unaccompanied alien
19 child.

20 “(B) PRIORITY REMOVAL CASES.—The Di-
21 rector of the Executive Office for Immigration
22 Review shall—

23 “(i) prioritize the removal proceedings
24 of an alien minor, or a family unit that in-
25 cludes an alien minor, detained under sub-
26 paragraph (A); and

1 “(ii) set a case completion goal of not
2 more than 100 days for such proceedings.

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

5 “(i) shall be governed solely by sections 212(d)(5), 217, 235, 236, and 241 of
6 the Immigration and Nationality Act (8
7 U.S.C. 1182(d)(5), 1187, 1225, 1226, and
8 1231) and implementing regulations or
9 policies; and
10 “(ii) shall not be governed by stand-

11 ards, requirements, restrictions, or procedures contained in a judicial decree or settlement relating to the authority to detain
12 or release alien minors.
13 “(2) CONDITIONS OF DETENTION.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of law, judicial determination,
16 consent decree, or settlement agreement, the
17 Secretary of Homeland Security shall determine, in the sole discretion of the Secretary, the
18 conditions of detention applicable to an alien
19 minor described in paragraph (1)(A) regardless
20 of the date of the alien’s arrival in the United States.
21 “(B) APPLICABILITY.—This section shall apply to an alien minor described in paragraph (1)(A) regardless
22 of the date of the alien’s arrival in the United States.
23 “(C) APPLICABILITY.—This section shall apply to an alien minor described in paragraph (1)(A) regardless
24 of the date of the alien’s arrival in the United States.

1 of whether the alien minor was previously an
2 unaccompanied alien child.

3 “(B) NO JUDICIAL REVIEW.—A determina-
4 tion under subparagraph (A) shall not be sub-
5 ject to judicial review.

6 “(3) RULE OF CONSTRUCTION.—Nothing in
7 this section—

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

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

13 “(4) PREEMPTION OF STATE LICENSING RE-
14 QUIREMENTS.—Notwithstanding any other provision
15 of law, judicial determination, consent decree, or set-
16 tlement agreement, a State may not require an im-
17 migration detention facility used to detain families
18 consisting of one or more children who have not at-
19 tained 18 years of age and the parents or legal
20 guardians of such children, that is located in the
21 State, to be licensed by the State or any political
22 subdivision thereof.

23 “(5) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated such sums
25 as may be necessary to carry out this subsection.

1 “(k) APPLICABILITY OF CONSENT DECREES, SET-
2 TLEMENTS, AND JUDICIAL DETERMINATIONS.—

3 “(1) FLORES SETTLEMENT AGREEMENT INAP-
4 PPLICABLE.—Conduct and activity that was, before
5 the date of the enactment of this subsection, subject
6 to a restriction or an obligation imposed by the stip-
7 ulated settlement agreement filed on January 17,
8 1997, in the United States District Court for the
9 Central District of California in Flores v. Reno (CV
10 85–4544–RJK) (commonly known as the ‘Flores
11 settlement agreement’), including any modification
12 of and any judicial determination based on such
13 agreement—

14 “(A) shall not be subject to such restric-
15 tion or obligation; and

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

18 “(2) OTHER SETTLEMENT AGREEMENTS OR
19 CONSENT DECREES.—Any settlement agreement or
20 consent decree relating to the conditions of detention
21 of an alien child shall be consistent with subsection
22 (j).”.

23 (b) SAFE AND PROMPT RETURN OF UNACCOM-
24 PANIED ALIEN CHILDREN.—Section 235(a) of the Wil-

1 liam Wilberforce Trafficking Victims Protection Reauthor-
2 ization Act of 2008 (8 U.S.C. 1232(a)) is amended—

3 (1) in paragraph (2)—

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

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

15 (C) in subparagraph (B)—

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

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

23 “(i) IN GENERAL.—An immigration
24 officer”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(ii) CHILDREN UNABLE TO MAKE
4 DECISIONS WITH RESPECT TO WITH-
5 DRAWAL OF APPLICATIONS FOR ADMIS-
6 SION.—If at the time of initial apprehen-
7 sion, an immigration officer determines, in
8 the sole and unreviewable discretion of the
9 immigration officer, that an unaccom-
10 panied alien child is not able to make an
11 independent decision with respect to the
12 withdrawal of his or her application for ad-
13 mission to the United States, the immigra-
14 tion officer shall refer the unaccompanied
15 alien child for removal proceedings under
16 section 240 of the Immigration and Na-
17 tionality Act (8 U.S.C. 1229a).

18 “(iii) CHILDREN ABLE TO MAKE DECI-
19 SIONS WITH RESPECT TO WITHDRAWAL OF
20 APPLICATIONS FOR ADMISSION.—

21 “(I) IN GENERAL.—Except as
22 described in subclause (III)(aa), not-
23 withstanding any other provision of
24 law that requires removal proceedings
25 under section 240 of the Immigration

1 and Nationality Act (8 U.S.C. 1229a),
2 including subparagraph (D) and sec-
3 tion 235 of the Immigration and Na-
4 tionality Act (8 U.S.C. 1225), in the
5 case of an unaccompanied alien child
6 who is able to make an independent
7 decision with respect to the with-
8 drawal of his or her application for
9 admission to the United States, as de-
10 termined by an immigration officer at
11 the time of initial apprehension, and
12 does not wish to withdraw such appli-
13 cation, the immigration officer shall—

14 “(aa) make a record of any
15 finding of inadmissibility or de-
16 portability, which shall be the
17 basis of a repatriation order; and

18 “(bb) refer the unaccom-
19 panied alien child for an inter-
20 view under subclause (II) to de-
21 termine whether it is more likely
22 than not that the unaccompanied
23 alien child—

24 “(AA) will be subjected
25 to trafficking on return to

1 his or her country of nation-
2 ality or last habitual resi-
3 dence; and

4 “(BB) would be grant-
5 ed asylum under section 208
6 of the Immigration and Na-
7 tionality Act (8 U.S.C.
8 1158), withholding of re-
9 moval under section
10 241(b)(3) of that Act (8
11 U.S.C. 1231(b)(3)), or pro-
12 tection under the Convention
13 Against Torture and Other
14 Cruel, Inhuman or Degrad-
15 ing Treatment or Punish-
16 ment, done at New York,
17 December 10, 1984 (re-
18 ferred to in this clause as
19 the ‘Convention Against
20 Torture’).

21 “(II) INTERVIEW.—

22 “(aa) IN GENERAL.—An
23 interview under subclause (I)(bb)
24 shall be conducted by an immi-

1 gration officer with specialized
2 training relating to—

3 “(AA) applicable law;

4 “(BB) interviewing
5 children; and

6 “(CC) child trafficking.

7 “(III) DETERMINATIONS BASED
8 ON INTERVIEW.—

9 “(aa) REMOVAL PRO-
10 CEEDINGS.—An unaccompanied
11 alien child described in subclause
12 (I) shall be referred for removal
13 proceedings under section 240 of
14 the Immigration and Nationality
15 Act (8 U.S.C. 1229a) if, based
16 on an interview under item (bb)
17 of that subclause, the immigra-
18 tion officer makes a determina-
19 tion that it is more likely than
20 not that the unaccompanied alien
21 child will be trafficked on return
22 to his or her country of nation-
23 ality or last habitual residence.

24 “(bb) ASYLUM ONLY DETER-
25 MINATIONS.—

1 “(AA) IN GENERAL.—
2 If, based on an interview
3 under subclause (I)(bb), the
4 immigration officer makes a
5 determination that it is
6 more likely than not that the
7 claim of an unaccompanied
8 alien child for asylum under
9 section 208 of the Immigra-
10 tion and Nationality Act (8
11 U.S.C. 1158), withholding of
12 removal under section
13 241(b)(3) of that Act (8
14 U.S.C. 1231(b)(3)), or pro-
15 tection under the Convention
16 Against Torture will be
17 granted, the unaccompanied
18 alien child shall be referred
19 to an immigration judge
20 solely for a determination
21 with respect to whether the
22 unaccompanied alien child is
23 eligible for asylum under
24 section 208 of that Act (8
25 U.S.C. 1158), withholding of

1 removal under section
2 241(b)(3) of that Act (8
3 U.S.C. 1231(b)(3)), or pro-
4 tection under the Convention
5 Against Torture and, if oth-
6 erwise eligible for asylum,
7 whether asylum shall be
8 granted in the exercise of
9 discretion.

10 “(BB) REPATRI-
11 ATION.—An unaccompanied
12 alien child referred to an im-
13 migration judge under
14 subitem (AA) shall be re-
15 turned to his or her country
16 of nationality or last habit-
17 ual residence if the immigra-
18 tion judge finds that the un-
19 accompanied alien child is
20 not entitled to asylum, with-
21 holding of removal, or pro-
22 tection under the Convention
23 Against Torture.

24 “(IV) DISCRETION OF IMMIGRA-
25 TION OFFICER; NO JUDICIAL RE-

1 VIEW.—A decision of an immigration
2 officer under this clause, and the
3 issuance of a repatriation order, shall
4 be in the sole, unreviewable discretion
5 of the immigration officer.

6 “(iv) DETENTION DURING PRO-
7 CEEDINGS.—

8 “(I) IN GENERAL.—Except as
9 provided in subclause (II), notwith-
10 standing any other provision of law,
11 settlement agreement, or consent de-
12 cree, an unaccompanied alien child
13 shall not be released from the custody
14 of the Secretary of Homeland Security
15 or the Director of the Office of Ref-
16 ugee Resettlement during the pend-
17 ency of the immigration or removal
18 proceedings of the unaccompanied
19 alien child.

20 “(II) EXCEPTION.—An unaccom-
21 panied alien child may be released in
22 the sole, unreviewable discretion of
23 the Director of the Office of Refugee
24 Resettlement.”; and

25 (D) in subparagraph (C)—

1 (i) by amending the subparagraph
2 heading to read as follows: “AGREEMENTS
3 WITH FOREIGN COUNTRIES.—”; and

4 (ii) in the matter preceding clause (i),
5 by striking “countries contiguous to the
6 United States” and inserting “Canada, El
7 Salvador, Guatemala, Honduras, Mexico,
8 and any other foreign country the Sec-
9 retary considers appropriate”;

10 (2) by striking paragraph (3);

11 (3) by redesignating paragraphs (4) and (5) as
12 paragraphs (3) and (4), respectively; and

13 (4) in paragraph (4)(D), as so redesignated, by
14 striking “from a contiguous country”.

15 (c) PROTECTING INTEGRITY OF SPECIAL IMMIGRANT
16 JUVENILE VISA PROGRAM.—Section 101(a)(27)(J) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1101(a)(27)(J)) is amended—

19 (1) in clause (i), by striking “, and whose” and
20 all that follows through “State law”; and

21 (2) in clause (iii)—

22 (A) in subclause (I), by striking “and” at
23 the end; and

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

1 “(III) an alien may not be grant-
2 ed special immigrant juvenile status
3 under this subparagraph if the reuni-
4 fication of the alien with any parent
5 or legal guardian of the alien is not
6 precluded by abuse, neglect, abandon-
7 ment, or any similar cause under
8 State law; and

9 “(IV)(aa) in assessing whether
10 an alien is entitled to special immi-
11 grant juvenile status under this sub-
12 paragraph, the Secretary of Homeland
13 Security shall determine whether an
14 order of dependency issued for pur-
15 poses of clause (i) was issued by an
16 appropriate court with appropriate ju-
17 risdiction; and

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

23 **SEC. 3. ENDING ABUSE OF ASYLUM SYSTEM.**

24 (a) STANDARDS TO DETER FRAUD AND ADVANCE
25 MERITORIOUS ASYLUM CLAIMS.—Section 235(b)(1)(B) of

1 the Immigration and Nationality Act (8 U.S.C.
2 1225(b)(1)(B)) is amended—

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

4 “(v) CREDIBLE FEAR OF PERSECU-
5 TION.—

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

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

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

22 “(II) BARS TO ASYLUM.—An
23 alien shall not be determined to have
24 a credible fear of persecution if the
25 alien is prohibited from applying for

1 or receiving asylum, including an alien
2 subject to a limitation or condition
3 under subsection (a)(2) or (b)(2) (in-
4 cluding a regulation promulgated
5 under such subsection) of section
6 208.”; and

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

8 “(vi) ELIGIBILITY FOR RELIEF.—

9 “(I) CREDIBLE FEAR REVIEW BY
10 IMMIGRATION JUDGE.—An alien de-
11 termined to have a credible fear of
12 persecution shall be referred to an im-
13 migration judge for review of such de-
14 termination, which shall be limited to
15 a determination whether the alien—

16 “(aa) is eligible for asylum
17 under section 208, withholding of
18 removal under section 241(b)(3),
19 or protection under the Conven-
20 tion Against Torture and Other
21 Cruel, Inhuman or Degrading
22 Treatment or Punishment, done
23 at New York, December 10, 1984
24 (referred to in this clause as the

1 ‘Convention Against Torture’;
2 and

3 “(bb) merits a grant of asy-
4 lum in the exercise of discretion.

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

7 “(aa) IN GENERAL.—Except
8 as provided in item (bb), if an
9 alien referred under subpara-
10 graph (A)(ii) is determined to
11 have a reasonable fear of perse-
12 cution, the alien shall be eligible
13 only for consideration of an ap-
14 plication for withholding of re-
15 moval under section 241(b)(3) or
16 protection under the Convention
17 Against Torture.

18 “(bb) EXCEPTION.—An
19 alien shall not be eligible for con-
20 sideration of an application for
21 relief under item (aa) if the fail-
22 ure of the alien to establish a
23 credible fear of persecution pre-
24 cludes the alien from eligibility
25 for such relief.

1 “(cc) LIMITATION.—An
2 alien whose application for relief
3 is adjudicated under item (aa)
4 shall not be eligible for any other
5 form of relief or protection from
6 removal.

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

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

14 (1) in subsection (a)—

15 (A) by striking paragraph (1) and insert-
16 ing the following:

17 “(1) IN GENERAL.—An alien who has entered
18 the United States through a designated port of entry
19 may apply for asylum under this section or section
20 235(b), as applicable.”; and

21 (B) in paragraph (2)(E), by striking “Sub-
22 paragraphs (A) and (B)” and inserting “Sub-
23 paragraph (A)”;

24 (2) in subsection (b)(3), by striking subpara-
25 graph (C).

1 (c) AUTHORITY FOR CERTAIN ALIENS TO APPLY FOR
2 ASYLUM.—Section 208(a)(2) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1158(a)(2)) is amended by adding
4 at the end the following:

5 “(F) INELIGIBILITY FOR ASYLUM.—

6 “(i) IN GENERAL.—Notwithstanding
7 any other provision of law, including para-
8 graph (1), except as provided in clause (ii),
9 an alien is ineligible for asylum if the
10 alien—

11 “(I) has been convicted of a fel-
12 ony;

13 “(II) is inadmissible under sec-
14 tion 212(a) (except paragraphs (4),
15 (5), and (7));

16 “(III) has been previously re-
17 moved from the United States; or

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

20 “(aa) a country that has a
21 refugee application and proc-
22 essing center; or

23 “(bb) a country contiguous
24 to such a country.

1 “(ii) EXCEPTION.—Notwithstanding
 2 clause (i), paragraph (1) applies to any
 3 alien who is present in the United States
 4 on the date of the enactment of this sub-
 5 paragraph.”.

6 **SEC. 4. ESTABLISHMENT OF REFUGEE APPLICATION AND**
 7 **PROCESSING CENTERS.**

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

11 “(53) The term ‘refugee application and proc-
 12 essing center’—

13 “(A) means a facility designated under sec-
 14 tion 207(g) by the Secretary of State to accept
 15 and process applications for refugee admissions
 16 to the United States; and

17 “(B) may include a United States em-
 18 bassy, consulate, or other diplomatic facility.”.

19 (2) DESIGNATION.—Section 207 of the Immi-
 20 gration and Nationality Act (8 U.S.C. 1157) is
 21 amended by adding at the end the following:

22 “(g) REFUGEE APPLICATION AND PROCESSING CEN-
 23 TERS.—

24 “(1) DESIGNATION.—Not later than 240 days
 25 after the date of the enactment of this subsection,

1 the Secretary of State, in consultation with the Sec-
2 retary of Homeland Security, shall designate refugee
3 application and processing centers outside the
4 United States.

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

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

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

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

22 “(4) ADJUDICATION BY REFUGEE OFFICERS.—
23 An application for refugee status submitted to a ref-
24 ugee application and processing center shall be adju-
25 dicated by a refugee officer.

1 “(5) PRIORITY.—The Secretary of State shall
2 ensure that refugee application and processing cen-
3 ters accord priority to applications submitted—

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

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

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

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

17 “(7) APPLICATION FEES.—

18 “(A) IN GENERAL.—The Secretary of
19 State and the Secretary of Homeland Security
20 shall charge, collect, and account for fees pre-
21 scribed by each such Secretary pursuant to sec-
22 tion 9701 of title 31, United States Code, for
23 the purpose of receiving, docketing, processing,
24 and adjudicating an application under this sub-
25 section.

1 “(B) BASIS FOR FEES.—The fees pre-
2 scribed under subparagraph (A) shall be based
3 on a consideration of the amount necessary to
4 deter frivolous applications and the cost for
5 processing the application, including the imple-
6 mentation of program integrity and anti-fraud
7 measures.”.

8 **SEC. 5. REGULATIONS.**

9 Notwithstanding section 553(b) of title 5, United
10 States Code, not later than 210 days after the date of
11 the enactment of this Act, the Secretary of Homeland Se-
12 curity and the Attorney General shall, jointly or sepa-
13 rately, publish in the Federal Register interim final rules
14 to implement the amendments made by section 3(c) and
15 section 4.

16 **SEC. 6. HIRING AUTHORITY.**

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

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

23 (2) the corresponding number of support staff,
24 as necessary.

1 (b) IMMIGRATION AND CUSTOMS ENFORCEMENT AT-
2 TORNEYS.—The Director of U.S. Immigration and Cus-
3 toms Enforcement shall increase the number of attorneys
4 and staff employed by U.S. Immigration and Customs En-
5 forcement by the number that is consistent with the work-
6 load staffing model to support the increase in immigration
7 judges.

○