

Calendar No. 181116TH 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 (for himself and Ms. MCSALLY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

AUGUST 16, 2019

Reported under authority of the order of the Senate of August 1, 2019, by Mr. GRAHAM, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Secure and Protect
3 Act of 2019”.

4 **SEC. 2. PROTECTION OF MINORS.**

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

9 “(j) **PROMOTING FAMILY UNITY.**—

10 “(1) **DETENTION OF ALIEN MINORS.**—

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

23 “(B) **PRIORITY REMOVAL CASES.**—The Di-
24 rector of the Executive Office for Immigration
25 Review shall—

1 “(i) prioritize the removal proceedings
2 of an alien minor, or a family unit that in-
3 cludes an alien minor, detained under sub-
4 paragraph (A); and

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

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

9 “(i) shall be governed solely by sec-
10 tions 212(d)(5), 217, 235, 236, and 241 of
11 the Immigration and Nationality Act (8
12 U.S.C. 1182(d)(5), 1187, 1225, 1226, and
13 1231) and implementing regulations or
14 policies; and

15 “(ii) shall not be governed by stand-
16 ards, requirements, restrictions, or proce-
17 dures contained in a judicial decree or set-
18 tlement relating to the authority to detain
19 or release alien minors.

20 “(2) CONDITIONS OF DETENTION.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law, judicial determination,
23 consent decree, or settlement agreement, the
24 Secretary of Homeland Security shall deter-
25

1 mine, in the sole discretion of the Secretary, the
2 conditions of detention applicable to an alien
3 minor described in paragraph (1)(A) regardless
4 of whether the alien minor was previously an
5 unaccompanied alien child.

6 “(B) NO JUDICIAL REVIEW.—A determina-
7 tion under subparagraph (A) shall not be sub-
8 ject to judicial review.

9 “(3) RULE OF CONSTRUCTION.—Nothing in
10 this section—

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

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

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

1 “(5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this subsection.

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

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

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

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

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

1 (b) SAFE AND PROMPT RETURN OF UNACCOM-
 2 PANIED ALIEN CHILDREN.—Section 235(a) of the Wil-
 3 liam Wilberforce Trafficking Victims Protection Reauthor-
 4 ization Act of 2008 (8 U.S.C. 1232(a)) is amended—

5 (1) in paragraph (2)—

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

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

17 (C) in subparagraph (B)—

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

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

1 “(i) IN GENERAL.—An immigration
2 officer”;

3 (iii) by adding at the end the fol-
4 lowing:

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

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

23 “(I) IN GENERAL.—Except as
24 described in subclause (III)(aa), not-
25 withstanding any other provision of

1 law that requires removal proceedings
2 under section 240 of the Immigration
3 and Nationality Act (8 U.S.C. 1229a),
4 including subparagraph (D) and sec-
5 tion 235 of the Immigration and Na-
6 tionality Act (8 U.S.C. 1225), in the
7 case of an unaccompanied alien child
8 who is able to make an independent
9 decision with respect to the with-
10 drawal of his or her application for
11 admission to the United States, as de-
12 termined by an immigration officer at
13 the time of initial apprehension, and
14 does not wish to withdraw such appli-
15 cation, the immigration officer shall—

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

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

1 “(AA) will be subjected
2 to trafficking on return to
3 his or her country of nation-
4 ality or last habitual resi-
5 dence; and

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

23 “(II) INTERVIEW.—

24 “(aa) IN GENERAL.—An
25 interview under subclause (I)(bb)

1 shall be conducted by an immi-
2 gration officer with specialized
3 training relating to—

4 “(AA) applicable law;

5 “(BB) interviewing
6 children; and

7 “(CC) child trafficking.

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

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

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“(bb) ASYLUM ONLY DETERMINATIONS.—

“(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

1 section 208 of that Act (8
2 U.S.C. 1158), withholding of
3 removal under section
4 241(b)(3) of that Act (8
5 U.S.C. 1231(b)(3)), or pro-
6 tection under the Convention
7 Against Torture and, if oth-
8 erwise eligible for asylum,
9 whether asylum shall be
10 granted in the exercise of
11 discretion.

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

1 “(IV) DISCRETION OF IMMIGRA-
2 TION OFFICER; NO JUDICIAL RE-
3 VIEW.—A decision of an immigration
4 officer under this clause, and the
5 issuance of a repatriation order, shall
6 be in the sole, unreviewable discretion
7 of the immigration officer.

8 “(iv) DETENTION DURING PRO-
9 CEEDINGS.—

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

22 “(II) EXCEPTION.—An unaccom-
23 panied alien child may be released in
24 the sole, unreviewable discretion of

1 the Director of the Office of Refugee
2 Resettlement.”; and

3 ~~(D)~~ in subparagraph (C)—

4 (i) by amending the subparagraph
5 heading to read as follows: “AGREEMENTS
6 WITH FOREIGN COUNTRIES.—”; and

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

13 (2) by striking paragraph (3);

14 (3) by redesignating paragraphs (4) and (5) as
15 paragraphs (3) and (4), respectively; and

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

18 (c) PROTECTING INTEGRITY OF SPECIAL IMMIGRANT
19 JUVENILE VISA PROGRAM.—Section 101(a)(27)(J) of the
20 Immigration and Nationality Act (8 U.S.C.
21 1101(a)(27)(J)) is amended—

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

24 (2) in clause (iii)—

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

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

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

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

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

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

2 (a) STANDARDS TO DETER FRAUD AND ADVANCE
 3 MERITORIOUS ASYLUM CLAIMS.—Section 235(b)(1)(B) of
 4 the Immigration and Nationality Act (8 U.S.C.
 5 1225(b)(1)(B)) is amended—

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

7 “(v) CREDIBLE FEAR OF PERSECU-
 8 TION.—

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

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

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

25 “(II) BARS TO ASYLUM.—An
 26 alien shall not be determined to have

1 a credible fear of persecution if the
 2 alien is prohibited from applying for
 3 or receiving asylum, including an alien
 4 subject to a limitation or condition
 5 under subsection (a)(2) or (b)(2) (in-
 6 cluding a regulation promulgated
 7 under such subsection) of section
 8 208.”; and

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

10 “(vi) ELIGIBILITY FOR RELIEF.—

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

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

1 (referred to in this clause as the
2 ‘Convention Against Torture’);
3 and

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

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

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

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

1 eludes the alien from eligibility
2 for such relief.

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

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

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

16 (1) in subsection (a)—

17 (A) by striking paragraph (1) and insert-
18 ing the following:

19 “(1) IN GENERAL.—An alien who has entered
20 the United States through a designated port of entry
21 may apply for asylum under this section or section
22 235(b), as applicable.”; and

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

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

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

7 “(F) ~~INELIGIBILITY FOR ASYLUM.~~—

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

13 “(I) has been convicted of a fel-
14 ony;

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

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

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

22 “(aa) a country that has a
23 refugee application and proe-
24 ssing center; or

1 “(bb) a country contiguous
2 to such a country.

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

8 **SEC. 4. ESTABLISHMENT OF REFUGEE APPLICATION AND**
9 **PROCESSING CENTERS.**

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

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

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

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

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

24 “(g) **REFUGEE APPLICATION AND PROCESSING CEN-**
25 **TERS.**—

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

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

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

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

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

24 “(4) ADJUDICATION BY REFUGEE OFFICERS.—
25 An application for refugee status submitted to a ref-

1 ugee application and processing center shall be adju-
2 dicated by a refugee officer.

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

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

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

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

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

19 “(7) APPLICATION FEES.—

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

1 and adjudicating an application under this sub-
2 section:

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

10 **SEC. 5. REGULATIONS.**

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

18 **SEC. 6. HIRING AUTHORITY.**

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

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

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

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

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Secure and Protect Act*
12 *of 2019”.*

13 **SEC. 2. PROTECTION OF MINORS.**

14 (a) *PROMOTING FAMILY UNITY.*—Section 235 of the
15 *William Wilberforce Trafficking Victims Protection Reau-*
16 *thorization Act of 2008 (8 U.S.C. 1232) is amended by add-*
17 *ing at the end the following:*

18 “(j) *PROMOTING FAMILY UNITY.*—

19 “(1) *DETENTION OF ALIEN MINORS.*—

20 “(A) *IN GENERAL.*—Notwithstanding any
21 *other provision of law, judicial determination,*
22 *consent decree, or settlement agreement, the Sec-*
23 *retary of Homeland Security may detain any*
24 *alien minor (other than an unaccompanied alien*
25 *child) who is inadmissible to the United States*

1 *under section 212(a) of the Immigration and*
2 *Nationality Act (8 U.S.C. 1182(a)) or removable*
3 *from the United States under section 237(a) of*
4 *that Act (8 U.S.C. 1227(a)) pending the comple-*
5 *tion of removal proceedings, regardless of wheth-*
6 *er the alien minor was previously an unaccom-*
7 *panied alien child.*

8 “(B) *PRIORITY REMOVAL CASES.—The At-*
9 *torney General shall—*

10 “(i) *prioritize the removal proceedings*
11 *of an alien minor, or a family unit that in-*
12 *cludes an alien minor, detained under sub-*
13 *paragraph (A); and*

14 “(ii) *set a case completion goal of not*
15 *more than 100 days for such proceedings.*

16 “(C) *DETENTION AND RELEASE DECI-*
17 *SIONS.—The decision to detain or release an*
18 *alien minor described in subparagraph (A)—*

19 “(i) *shall be governed solely by sections*
20 *212(d)(5), 217, 235, 236, and 241 of the*
21 *Immigration and Nationality Act (8 U.S.C.*
22 *1182(d)(5), 1187, 1225, 1226, and 1231)*
23 *and implementing regulations or policies;*
24 *and*

1 “(ii) shall not be governed by stand-
2 ards, requirements, restrictions, or proce-
3 dures contained in a judicial decree or set-
4 tlement relating to the authority to detain
5 or release alien minors.

6 “(2) *CONDITIONS OF DETENTION.*—

7 “(A) *IN GENERAL.*—Notwithstanding any
8 other provision of law, judicial determination,
9 consent decree, or settlement agreement, the Sec-
10 retary of Homeland Security shall determine, in
11 the sole discretion of the Secretary, the condi-
12 tions of detention applicable to an alien minor
13 described in paragraph (1)(A) regardless of
14 whether the alien minor was previously an unac-
15 panied alien child.

16 “(B) *NO JUDICIAL REVIEW.*—A determina-
17 tion under subparagraph (A) shall not be subject
18 to judicial review.

19 “(3) *RULE OF CONSTRUCTION.*—Nothing in this
20 section—

21 “(A) affects the eligibility for bond or parole
22 of an alien; or

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

1 “(4) *PREEMPTION OF STATE LICENSING RE-*
2 *QUIREMENTS.—Notwithstanding any other provision*
3 *of law, judicial determination, consent decree, or set-*
4 *tlement agreement, a State may not require an immi-*
5 *gration detention facility used to detain families con-*
6 *sisting of one or more children who have not attained*
7 *18 years of age and the parents or legal guardians of*
8 *such children, that is located in the State, to be li-*
9 *censed by the State or any political subdivision there-*
10 *of.*

11 “(5) *CONDITIONS OF CUSTODY.—The Secretary*
12 *of Homeland Security shall ensure that each—*

13 “(A) *family residential facility is secure*
14 *and safe; and*

15 “(B) *alien child and accompanying parent*
16 *at a family residential facility has—*

17 “(i) *suitable living accommodations;*

18 “(ii) *access to drinking water and food;*

19 “(iii) *timely access to medical assist-*
20 *ance, including mental health assistance;*
21 *and*

22 “(iv) *access to any other service nec-*
23 *essary for the adequate care of a minor*
24 *child.*

1 “(6) *AUTHORIZATION OF APPROPRIATIONS.—*
2 *There are authorized to be appropriated such sums as*
3 *may be necessary to carry out this subsection.*

4 “(k) *APPLICABILITY OF CONSENT DECREES, SETTLE-*
5 *MENTS, AND JUDICIAL DETERMINATIONS.—*

6 “(1) *FLORES SETTLEMENT AGREEMENT INAPPLI-*
7 *CABLE.—Any conduct or activity that was, before the*
8 *date of the enactment of this subsection, subject to any*
9 *restriction or obligation imposed by the stipulated set-*
10 *tlement agreement filed on January 17, 1997, in the*
11 *United States District Court for the Central District*
12 *of California in Flores v. Reno, CV 85–4544–RJK,*
13 *(commonly known as the ‘Flores settlement agree-*
14 *ment’), or imposed by any amendment of that agree-*
15 *ment or judicial determination based on that agree-*
16 *ment—*

17 “(A) *shall be subject to the restrictions and*
18 *obligations in subsection (j) or imposed by the*
19 *William Wilberforce Trafficking Victims Protec-*
20 *tion Reauthorization Act of 2008 (Public Law*
21 *110–457); and*

22 “(B) *shall not be subject to the restrictions*
23 *and the obligations imposed by such settlement*
24 *agreement or judicial determination.*

1 “(2) *OTHER SETTLEMENT AGREEMENTS OR CON-*
2 *SENT DECREES.—In any civil action with respect to*
3 *the conditions of detention of alien children, the court*
4 *shall not enter or approve a settlement agreement or*
5 *consent decree unless it complies with the limitations*
6 *set forth in subsection (j).”.*

7 **(b) SAFE AND PROMPT RETURN OF UNACCOMPANIED**
8 **ALIEN CHILDREN.—Section 235(a) of the William Wilber-**
9 **force Trafficking Victims Protection Reauthorization Act of**
10 **2008 (8 U.S.C. 1232(a)) is amended—**

11 **(1) in paragraph (2)—**

12 **(A) by amending the paragraph heading to**
13 **read as follows: “RULES FOR REPATRIATING UN-**
14 **ACCOMPANIED ALIEN CHILDREN”;**

15 **(B) in subparagraph (A), in the matter pre-**
16 **ceding clause (i), by striking “who is a national**
17 **or habitual resident of a country that is contig-**
18 **uous with the United States shall be treated in**
19 **accordance with subparagraph (B)” and insert-**
20 **ing “shall be treated in accordance with this**
21 **paragraph or subsection (b), as applicable”;**

22 **(C) in subparagraph (B)—**

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

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

5 “(i) *IN GENERAL.*—An immigration of-
6 ficer”; and

7 (iii) by adding at the end the fol-
8 lowing:

9 “(ii) *CHILDREN UNABLE TO MAKE DE-*
10 *CISIONS WITH RESPECT TO WITHDRAWAL OF*
11 *APPLICATIONS FOR ADMISSION.*—If at the
12 time of initial apprehension, an immigra-
13 tion officer determines, in the sole and
14 unreviewable discretion of the immigration
15 officer, that an unaccompanied alien child
16 is not able to make an independent decision
17 with respect to the withdrawal of his or her
18 application for admission to the United
19 States, the immigration officer shall refer
20 the unaccompanied alien child for removal
21 proceedings under section 240 of the *Immi-*
22 *gration and Nationality Act* (8 U.S.C.
23 1229a).

1 “(iii) CHILDREN ABLE TO MAKE DECI-
2 SIONS WITH RESPECT TO WITHDRAWAL OF
3 APPLICATIONS FOR ADMISSION.—

4 “(I) IN GENERAL.—Except as de-
5 scribed in subclause (III)(aa), notwith-
6 standing any other provision of law
7 that requires removal proceedings
8 under section 240 of the Immigration
9 and Nationality Act (8 U.S.C. 1229a),
10 including subparagraph (D) and sec-
11 tion 235 of the Immigration and Na-
12 tionality Act (8 U.S.C. 1225), in the
13 case of an unaccompanied alien child
14 who is able to make an independent
15 decision with respect to the withdrawal
16 of his or her application for admission
17 to the United States, as determined by
18 an immigration officer at the time of
19 initial apprehension, and does not
20 wish to withdraw such application, the
21 immigration officer shall—

22 “(aa) make a record of any
23 finding of inadmissibility or de-
24 portability, which shall be the
25 basis of a repatriation order,

1 *which shall be carried out and the*
2 *child shall be returned to his or*
3 *her country of nationality or last*
4 *habitual residence, unless the*
5 *child is referred—*

6 *“(AA) for removal pro-*
7 *ceedings pursuant to sub-*
8 *clause (III)(aa); or*

9 *“(BB) to an immigra-*
10 *tion judge for a determina-*
11 *tion pursuant to subclause*
12 *(III)(bb); and*

13 *“(bb) refer the unaccom-*
14 *panied alien child for an inter-*
15 *view under subclause (II) to deter-*
16 *mine whether it is more likely*
17 *than not that the unaccompanied*
18 *alien child—*

19 *“(AA) will be subjected*
20 *to trafficking on return to*
21 *his or her country of nation-*
22 *ality or last habitual resi-*
23 *dence; and*

24 *“(BB) would be granted*
25 *asylum under section 208 of*

1 *the Immigration and Nation-*
2 *ality Act (8 U.S.C. 1158),*
3 *withholding of removal under*
4 *section 241(b)(3) of that Act*
5 *(8 U.S.C. 1231(b)(3)), or*
6 *protection under the regula-*
7 *tions issued pursuant to the*
8 *legislation implementing the*
9 *Convention Against Torture*
10 *and Other Cruel, Inhuman*
11 *or Degrading Treatment or*
12 *Punishment, done at New*
13 *York, December 10, 1984 (re-*
14 *ferred to in this clause as the*
15 *‘Convention Against Tor-*
16 *ture’).*

17 “(II) INTERVIEW.—

18 “(aa) IN GENERAL.—An
19 interview under subclause (I)(bb)
20 shall be conducted by an immi-
21 gration officer with specialized
22 training relating to—

23 “(AA) applicable law;

24 “(BB) interviewing chil-
25 dren; and

1 “(CC) *child trafficking.*

2 “(III) *DETERMINATIONS BASED*
3 *ON INTERVIEW.—*

4 “(aa) *REMOVAL PRO-*
5 *CEEDINGS.—An unaccompanied*
6 *alien child described in subclause*
7 *(I) shall be referred for removal*
8 *proceedings under section 240 of*
9 *the Immigration and Nationality*
10 *Act (8 U.S.C. 1229a) if, based on*
11 *an interview under item (bb) of*
12 *that subclause, the immigration*
13 *officer makes a determination that*
14 *it is more likely than not that the*
15 *unaccompanied alien child will be*
16 *trafficked on return to his or her*
17 *country of nationality or last ha-*
18 *bitual residence.*

19 “(bb) *ASYLUM ONLY DETER-*
20 *MINATIONS.—*

21 “(AA) *IN GENERAL.—If,*
22 *based on an interview under*
23 *subclause (I)(bb), the immi-*
24 *gration officer makes a deter-*
25 *mination that it is more like-*

1 *ly than not that the claim of*
2 *an unaccompanied alien*
3 *child for asylum under sec-*
4 *tion 208 of the Immigration*
5 *and Nationality Act (8*
6 *U.S.C. 1158), withholding of*
7 *removal under section*
8 *241(b)(3) of that Act (8*
9 *U.S.C. 1231(b)(3)), or protec-*
10 *tion under the Convention*
11 *Against Torture will be*
12 *granted, the unaccompanied*
13 *alien child shall be referred*
14 *to an immigration judge*
15 *solely for a determination*
16 *with respect to whether the*
17 *unaccompanied alien child is*
18 *eligible for asylum under sec-*
19 *tion 208 of that Act (8*
20 *U.S.C. 1158), withholding of*
21 *removal under section*
22 *241(b)(3) of that Act (8*
23 *U.S.C. 1231(b)(3)), or protec-*
24 *tion under the regulations*
25 *issued pursuant to the legis-*

1 *lation implementing the Con-*
2 *vention Against Torture and,*
3 *if otherwise eligible for asy-*
4 *lum, whether asylum shall be*
5 *granted in the exercise of dis-*
6 *cretion.*

7 “(BB) *REPATRI-*
8 *ATION.—An unaccompanied*
9 *alien child referred to an im-*
10 *migration judge under*
11 *subitem (AA) shall be re-*
12 *turned to his or her country*
13 *of nationality or last habit-*
14 *ual residence if the immigra-*
15 *tion judge finds that the un-*
16 *accompanied alien child is*
17 *not entitled to asylum, with-*
18 *holding of removal, or protec-*
19 *tion under the regulations*
20 *issued pursuant to the legis-*
21 *lation implementing the Con-*
22 *vention Against Torture.*

23 “(IV) *DISCRETION OF IMMIGRA-*
24 *TION OFFICER; NO JUDICIAL REVIEW.—*
25 *A decision of an immigration officer*

1 *under this clause, and the issuance of*
2 *a repatriation order, shall be in the*
3 *sole, unreviewable discretion of the im-*
4 *migration officer.*

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

7 “(I) *IN GENERAL.—Except as pro-*
8 *vided in subclauses (II) and (III), not-*
9 *withstanding any other provision of*
10 *law, settlement agreement, or consent*
11 *decree, an unaccompanied alien child*
12 *shall not be released from the custody*
13 *of the Secretary of Homeland Security*
14 *or the Director of the Office of Refugee*
15 *Resettlement during the pendency of*
16 *the immigration or removal pro-*
17 *ceedings of the unaccompanied alien*
18 *child.*

19 “(II) *RELEASE TO SPONSOR.—*

20 “(aa) *IN GENERAL.—Except*
21 *as provided in item (bb), the Di-*
22 *rector of the Office of Refugee Re-*
23 *settlement may, in the sole,*
24 *unreviewable discretion of the Di-*
25 *rector, release an unaccompanied*

1 *alien child to a sponsor who is a*
2 *verified parent or legal guardian*
3 *or, in the case of an unaccom-*
4 *panied alien child who does not*
5 *have a verified parent or legal*
6 *guardian in the United States, a*
7 *close relative, a distant relative,*
8 *or an unrelated adult.*

9 “(bb) *EXCEPTION.—The Di-*
10 *rector of the Office of Refugee Re-*
11 *settlement shall not under any*
12 *circumstance release an unaccom-*
13 *panied alien child to a sponsor or*
14 *a member of the sponsor’s house-*
15 *hold who has committed an of-*
16 *fense described in section*
17 *236(c)(1) of the Immigration and*
18 *Nationality Act (8 U.S.C.*
19 *1226(c)(1)), is detained while in*
20 *removal proceedings under section*
21 *240 of such Act (8 U.S.C. 1229a),*
22 *has assisted or facilitated the*
23 *smuggling or trafficking of a*
24 *child, or would otherwise pose a*

1 *threat to the well-being of the un-*
2 *accompanied alien child.*

3 “(cc) *PROVISION OF INFOR-*
4 *MATION TO SECRETARY OF HOME-*
5 *LAND SECURITY.—The Secretary*
6 *of Health and Human Services*
7 *shall provide to the Secretary of*
8 *Homeland Security information*
9 *relating to the sponsor, potential*
10 *sponsor, and each member of the*
11 *household of the sponsor or poten-*
12 *tial sponsor, of each unaccom-*
13 *panied alien child.*

14 “(III) *PROGRAMS FOR UNACCOM-*
15 *PANIED ALIEN CHILDREN WITHOUT*
16 *SPONSORS.—In the case of an unac-*
17 *companied alien child who cannot be*
18 *placed with a sponsor under item (aa),*
19 *the Director of the Office of Refugee*
20 *Resettlement may release the child to a*
21 *program for unaccompanied alien mi-*
22 *nor, such as a program under section*
23 *412(d) of the Immigration and Nation-*
24 *ality Act (8 U.S.C. 1522(d)).”;* 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 Secretary
9 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 juvenile
4 court determines that the alien may be
5 returned to the legal custody of any
6 parent of the alien; and

7 “(IV)(aa) in assessing whether an
8 alien is entitled to special immigrant
9 juvenile classification under this sub-
10 paragraph, the Secretary of Homeland
11 Security may, in the discretion of the
12 Secretary, determine whether—

13 “(AA) an order of depend-
14 ency or custody issued for pur-
15 poses of clause (i) was issued dur-
16 ing juvenile court abuse and ne-
17 glect proceedings for the purpose
18 of providing permanency to an
19 alien the parents of whom have
20 been found to be unfit; and

21 “(BB) such order was issued
22 by a court of appropriate jurisdic-
23 tion ; and

24 “(bb) notwithstanding any other
25 provision of law, no court shall have

1 *jurisdiction to review a determination*
2 *made by the Secretary of Homeland*
3 *Security under this subclause;”.*

4 *(d) PAROLE REFORM.—*

5 *(1) IN GENERAL.—Paragraph (5) of section*
6 *212(d) (8 U.S.C. 1182(d)) is amended to read as fol-*
7 *lows:*

8 *“(5) HUMANITARIAN AND SIGNIFICANT PUBLIC*
9 *BENEFIT PAROLE.—*

10 *“(A) IN GENERAL.—Subject to the provi-*
11 *sions of this paragraph and section 214(f)(2), the*
12 *Secretary of Homeland Security, in the sole dis-*
13 *cretion of the Secretary of Homeland Security,*
14 *may, on an individual case-by-case basis and*
15 *not according to eligibility criteria describing an*
16 *entire class of potential parole recipients, parole*
17 *an alien into the United States temporarily,*
18 *under such conditions as the Secretary of Home-*
19 *land Security may prescribe, only—*

20 *“(i) for an urgent humanitarian rea-*
21 *son (as described under subparagraph (B));*
22 *or*

23 *“(ii) for a reason deemed strictly for*
24 *the significant public benefit (as described*
25 *under subparagraph (C)).*

1 “(B) *HUMANITARIAN PAROLE.*—*The Sec-*
2 *retary of Homeland Security may parole an*
3 *alien based on an urgent humanitarian reason*
4 *described in this subparagraph only if—*

5 “(i) *the alien has a medical emergency*
6 *and the alien cannot obtain necessary treat-*
7 *ment in the foreign state in which the alien*
8 *is residing or the medical emergency is life-*
9 *threatening and there is insufficient time*
10 *for the alien to be admitted through the nor-*
11 *mal visa process;*

12 “(ii) *the alien is the legal guardian or*
13 *otherwise has legal authority to make med-*
14 *ical decisions on behalf of an alien described*
15 *in clause (i);*

16 “(iii) *the alien is needed in the United*
17 *States in order to donate an organ or other*
18 *tissue for transplant into an immediate*
19 *family member and there is insufficient*
20 *time for the alien to be admitted through*
21 *the normal visa process;*

22 “(iv) *the alien has an immediate fam-*
23 *ily member in the United States whose*
24 *death is imminent and the alien could not*
25 *arrive in the United States in time to see*

1 *such family member alive if the alien were*
2 *to be admitted through the normal visa*
3 *process;*

4 *“(v) the alien is a lawful applicant for*
5 *adjustment of status under section 245; or*

6 *“(vi) the alien was lawfully granted*
7 *status under section 208 or lawfully admit-*
8 *ted under section 207.*

9 *“(C) SIGNIFICANT PUBLIC BENEFIT PA-*
10 *ROLE.—The Secretary of Homeland Security*
11 *may parole an alien based on a reason deemed*
12 *strictly for the significant public benefit de-*
13 *scribed in this subparagraph only if—*

14 *“(i) the presence of the alien is nec-*
15 *essary in a matter such as a criminal in-*
16 *vestigation or prosecution, espionage activ-*
17 *ity, or other similar law enforcement or in-*
18 *telligence-related activity;*

19 *“(ii) the presence of the alien is nec-*
20 *essary in a civil matter concerning the ter-*
21 *mination of parental rights;*

22 *“(iii) the alien has previously assisted*
23 *the United States Government in a matter*
24 *described in clause (i) and the life of the*

1 *alien would be threatened if the alien were*
2 *not permitted to enter the United States;*

3 “(iv) *in the case of an alien detained*
4 *under section 235, it is necessary to release*
5 *from detention and grant parole to the alien*
6 *due to a safety concern or for the preserva-*
7 *tion of life and property, including in the*
8 *case of—*

9 “(I) *lack of adequate bed space in*
10 *a detention facility; or*

11 “(II) *an alien who has a serious*
12 *medical condition such that continued*
13 *detention would be life-threatening or*
14 *would risk serious bodily injury, dis-*
15 *figurement, or permanent disability; or*

16 “(v) *in the case of an alien returned to*
17 *a foreign territory contiguous to the United*
18 *States pursuant to section 235(b)(2)(C), it*
19 *is necessary to parole the alien into the*
20 *United States for an immigration pro-*
21 *ceeding.*

22 “(D) *LIMITATION ON THE USE OF PAROLE*
23 *AUTHORITY.—The Secretary of Homeland Secu-*
24 *rity may not use the parole authority under this*
25 *paragraph—*

1 “(i) to circumvent immigration policy
2 established by law;

3 “(ii) to admit classes of aliens who do
4 not qualify for admission under established
5 legal immigration categories; or

6 “(iii) to supplement established immi-
7 gration categories without an Act of Con-
8 gress.

9 “(E) *PAROLE NOT AN ADMISSION.*—Parole
10 of an alien under this paragraph shall not be
11 considered an admission of the alien into the
12 United States. When the purposes of the parole
13 of an alien have been served, or such parole is
14 revoked, as determined by the Secretary of
15 Homeland Security, the alien shall immediately
16 return or be returned to the custody from which
17 the alien was paroled and the alien shall be con-
18 sidered for admission to the United States on the
19 same basis as other similarly situated applicants
20 for admission.

21 “(F) *REPORT TO CONGRESS.*—Not later
22 than 90 days after the end of each fiscal year,
23 the Secretary of Homeland Security shall submit
24 a report to the Committee on the Judiciary of
25 the Senate and the Committee on the Judiciary

1 *of the House of Representatives describing the*
 2 *number and categories of aliens paroled into the*
 3 *United States under this paragraph. Each such*
 4 *report shall contain information and data con-*
 5 *cerning the number and categories of aliens pa-*
 6 *roled, the duration of parole, and the current*
 7 *status of aliens paroled during the preceding fis-*
 8 *cal year.”.*

9 (2) *EFFECTIVE DATE.*—*The amendment made by*
 10 *paragraph (1) shall take effect on the first day of the*
 11 *first month beginning more than 60 days after the*
 12 *date of the enactment of this Act.*

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

14 (a) *STANDARDS TO DETER FRAUD AND ADVANCE*
 15 *MERITORIOUS ASYLUM CLAIMS.*—*Section 235(b)(1)(B) of*
 16 *the Immigration and Nationality Act (8 U.S.C.*
 17 *1225(b)(1)(B)) is amended—*

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

19 “(v) *CREDIBLE FEAR OF PERSECU-*
 20 *TION.*—

21 “(I) *IN GENERAL.*—*For purposes*
 22 *of this subparagraph, the term ‘credible*
 23 *fear of persecution’ means that it is*
 24 *more likely than not that the alien*

1 *would be able to establish eligibility for*
 2 *asylum under section 208—*

3 “*(aa) taking into account*
 4 *such facts as are known to the of-*
 5 *ficer; and*

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

12 “*(II) BARS TO ASYLUM.—An*
 13 *alien shall not be determined to have a*
 14 *credible fear of persecution if the alien*
 15 *is prohibited from applying for or re-*
 16 *ceiving asylum, including an alien*
 17 *subject to a limitation or condition*
 18 *under subsection (a)(2) or (b)(2) (in-*
 19 *cluding a regulation promulgated*
 20 *under such subsection) of section 208.”;*
 21 *and*

22 *(2) by adding at the end the following:*

23 “*(vi) ELIGIBILITY FOR RELIEF.—*

24 “*(I) CREDIBLE FEAR REVIEW BY*
 25 *IMMIGRATION JUDGE.—An alien deter-*

1 *mined to have a credible fear of perse-*
2 *cution shall be referred to an immigra-*
3 *tion judge for review of such deter-*
4 *mination, which shall be limited to a*
5 *determination whether the alien—*

6 *“(aa) is eligible for asylum*
7 *under section 208, withholding of*
8 *removal under section 241(b)(3),*
9 *or protection under the Conven-*
10 *tion Against Torture and Other*
11 *Cruel, Inhuman or Degrading*
12 *Treatment or Punishment, done*
13 *at New York, December 10, 1984*
14 *(referred to in this clause as the*
15 *‘Convention Against Torture’);*
16 *and*

17 *“(bb) merits a grant of asy-*
18 *lum in the exercise of discretion.*

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

21 *“(aa) IN GENERAL.—Except*
22 *as provided in item (bb), if an*
23 *alien referred under subparagraph*
24 *(A)(i) is determined to have a*
25 *reasonable fear of persecution or*

1 *torture, the alien shall be eligible*
2 *only for consideration of an ap-*
3 *plication for withholding of re-*
4 *moval under section 241(b)(3) or*
5 *protection under the Convention*
6 *Against Torture.*

7 “(bb) *EXCEPTION.—An alien*
8 *shall not be eligible for consider-*
9 *ation of an application for relief*
10 *under item (aa) if the failure of*
11 *the alien to establish a credible*
12 *fear of persecution precludes the*
13 *alien from eligibility for such re-*
14 *lief.*

15 “(cc) *LIMITATION.—An alien*
16 *whose application for relief is ad-*
17 *judicated under item (aa) shall*
18 *not be eligible for any other form*
19 *of relief or protection from re-*
20 *moval.*

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

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

4 (1) *in subsection (a)—*

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

7 “(1) *IN GENERAL.*—Only an alien who has en-
 8 *tered the United States through a designated port of*
 9 *entry may apply for asylum under this section or sec-*
 10 *tion 235(b), as applicable.”; and*

11 (B) *in paragraph (2)—*

12 (i) *in subparagraph (A), by striking “,*
 13 *pursuant to a bilateral or multilateral*
 14 *agreement,”; and*

15 (ii) *in subparagraph (E), by striking*
 16 *“Subparagraphs (A) and (B)” and insert-*
 17 *ing “Subparagraph (A)”;* and

18 (2) *in subsection (b)(3), by striking subpara-*
 19 *graph (C).*

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

24 “(F) *INELIGIBILITY FOR ASYLUM.*—

1 “(i) *IN GENERAL.*—Notwithstanding
2 any other provision of law, including para-
3 graph (1), except as provided in clause (ii),
4 an alien is ineligible for asylum if the
5 alien—

6 “(I) has been convicted of a fel-
7 ony;

8 “(II) is inadmissible under sec-
9 tion 212(a) (except paragraphs (4),
10 (5), and (7));

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

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

15 “(aa) a country in Central
16 America that has a refugee appli-
17 cation and processing center; or

18 “(bb) a country contiguous to
19 such a country (other than Mex-
20 ico).

21 “(ii) *EXCEPTION.*—Notwithstanding
22 clause (i), paragraph (1) shall not apply to
23 any alien who is present in the United
24 States on the date of the enactment of this
25 subparagraph.”

1 **SEC. 4. ESTABLISHMENT OF REFUGEE APPLICATION AND**
2 **PROCESSING CENTERS.**

3 (a) *DEFINITION.*—Section 101(a) of the Immigration
4 and Nationality Act (8 U.S.C. 1101(a)) is amended by add-
5 ing at the end the following:

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

8 “(A) means a facility designated under sec-
9 tion 207(g) by the Secretary of State to accept
10 and process applications for refugee admissions
11 to the United States; and

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

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

17 “(g) *REFUGEE APPLICATION AND PROCESSING CEN-*
18 *TERS.*—

19 “(1) *DESIGNATION.*—Not later than 240 days
20 after the date of the enactment of this subsection, the
21 Secretary of State, in consultation with the Secretary
22 of Homeland Security, shall designate refugee appli-
23 cation and processing centers outside the United
24 States.

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

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

3 “(B) not fewer than 3 refugee application
4 and processing centers in Central America at lo-
5 cations selected by the Secretary of State, in con-
6 sultation with the Secretary of Homeland Secu-
7 rity.

8 “(3) *DUTIES OF SECRETARY OF STATE.*—The
9 Secretary of State, in coordination with the Secretary
10 of Homeland Security, shall ensure that any alien
11 who is a national or habitual resident of a country
12 in which a refugee application and processing center
13 is located, or a country contiguous to such a country,
14 may apply for refugee status at a refugee application
15 and processing center.

16 “(4) *ADJUDICATION BY REFUGEE OFFICERS.*—
17 An application for refugee status submitted to a ref-
18 ugee application and processing center shall be adju-
19 dicated by a refugee officer.

20 “(5) *PRIORITY.*—The Secretary of State shall en-
21 sure that refugee application and processing centers
22 accord priority to applications submitted—

23 “(A) by aliens who have been referred by an
24 authorized nongovernmental organization, as de-
25 termined by the Secretary of State;

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

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

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

11 “(7) APPLICATION FEES.—

12 “(A) IN GENERAL.—The Secretary of State
13 and the Secretary of Homeland Security shall
14 charge, collect, and account for fees prescribed by
15 each such Secretary pursuant to subsections (m)
16 and (n) of section 286 and section 9701 of title
17 31, United States Code, for the purpose of receiv-
18 ing, docketing, processing, and adjudicating an
19 application under this subsection.

20 “(B) BASIS FOR FEES.—The fees prescribed
21 under subparagraph (A) shall be based on a con-
22 sideration of the amount necessary to deter frivo-
23 lous applications and the cost for processing the
24 application, including the implementation of
25 program integrity and anti-fraud measures.”.

1 (c) *SUNSET.*—*The amendments made by this section*
2 *shall cease to be effective beginning on the date that is three*
3 *years and 240 days after the date of the enactment of this*
4 *Act.*

5 **SEC. 5. REGULATIONS.**

6 *Notwithstanding section 553(b) of title 5, United*
7 *States Code, not later than 210 days after the date of the*
8 *enactment of this Act, the Secretary of Homeland Security*
9 *and the Attorney General shall, jointly or separately, pub-*
10 *lish in the Federal Register interim final rules to imple-*
11 *ment the amendments made by section 3(c) and section 4.*

12 **SEC. 6. HIRING AUTHORITY.**

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

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

19 (2) *the corresponding number of support staff, as*
20 *necessary.*

21 (b) *IMMIGRATION AND CUSTOMS ENFORCEMENT AT-*
22 *TORNEYS.*—*The Director of U.S. Immigration and Customs*
23 *Enforcement shall increase the number of attorneys and*
24 *staff employed by U.S. Immigration and Customs Enforce-*
25 *ment by the number that is consistent with the workload*

1 *staffing model to support the increase in immigration*
2 *judges.*

3 (c) *AUTHORIZATION OF APPROPRIATIONS.—There are*
4 *authorized to be appropriated such sums as may be nec-*
5 *essary for—*

6 (1) *the hiring of immigration judges, support*
7 *staff, and U.S. Immigration and Customs Enforce-*
8 *ment attorneys under this section; and*

9 (2) *the lease, purchase, or construction of facili-*
10 *ties or equipment (including video teleconferencing*
11 *equipment and equipment for electronic filing of im-*
12 *migration cases), and the transfer of federally owned*
13 *temporary housing units to serve as facilities, for—*

14 (A) *the increased number of immigration*
15 *judges, attorneys, and support staff under this*
16 *section; and*

17 (B) *conducting immigration court pro-*
18 *ceedings in close proximity to the locations at*
19 *which aliens are apprehended and detained.*

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116TH CONGRESS
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S. 1494

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.

AUGUST 16, 2019

Reported with an amendment