

**AMENDMENT TO H.R. 2203, AS REPORTED
OFFERED BY MR. ESPAILLAT OF NEW YORK**

Add, at the end of the bill, the following (and conform the table of contents accordingly):

1 **TITLE IV—REUNIFICATION OF**
2 **SEPARATED FAMILIES**

3 **SEC. 401. REUNIFICATION OF SEPARATED FAMILIES.**

4 (a) RULEMAKING.—

5 (1) RULE.—Not later than 10 days after the
6 date of the enactment of this title, the Secretary of
7 Homeland Security and the Secretary of Health and
8 Human Services, after immediate consultation with
9 humanitarian organizations, child welfare organiza-
10 tions, State child welfare agencies, and States con-
11 tiguous with the border with Mexico, shall promul-
12 gate and publish a rule through a direct final rule
13 that specifically describes the coordinated efforts
14 that DHS and HHS will undertake to aid an appre-
15 hended parent or legal guardian in locating and re-
16 uniting with any children separated from them at or
17 near the port of entry, or within 100 miles of the
18 border, pursuant to applicable law.

1 (2) DEVELOPMENT; SERVICES; PUBLICATION.—

2 The rule promulgated pursuant to paragraph (1)
3 shall—

4 (A) be developed to protect the best inter-
5 ests of affected children;

6 (B) describe all pro bono or government-
7 funded services, including immigration services,
8 available for apprehended parents and legal
9 guardians or affected children; and

10 (C) be made publicly available in writing
11 and on the websites of DHS and HHS.

12 (b) COVERAGE OF JOINT RULE.—The rule published
13 pursuant to subsection (a) shall outline the coordinated
14 efforts of DHS and HHS, including efforts—

15 (1) to develop and conduct family tracing proce-
16 dures, in cooperation with nongovernmental experts
17 in child welfare best practices;

18 (2) to maintain a functional, accessible, fre-
19 quent, and no-cost means for apprehended parents
20 and legal guardians to contact their child through a
21 telephone hotline or visual conferencing—

22 (A) to obtain daily-updated information
23 about the location of their child and all sched-
24 uled immigration proceedings for their child;
25 and

1 (B) to set up opportunities to speak with
2 their child not fewer than 3 times per week, in-
3 cluding at least once by video;

4 (3) to facilitate substantial daily access of non-
5 governmental case workers, child advocates, and
6 legal counsel to children separated from their appre-
7 hended parents and legal guardians to represent
8 these children's best interests in custody decisions
9 and immigration proceedings;

10 (4) to provide for humanitarian organizations
11 and State and local child welfare agencies in the ju-
12 risdictions in which the children are located to con-
13 duct unannounced, independent weekly inspections
14 of all DHS and HHS facilities at which children
15 who are separated from their apprehended parents
16 or legal guardians are in custody;

17 (5) to coordinate with the Department of State
18 and embassies and consulates of foreign govern-
19 ments to locate apprehended parents and legal
20 guardians of children who have departed from the
21 United States;

22 (6) to provide clear notice to apprehended par-
23 ents and legal guardians of their legal rights, includ-
24 ing—

1 (A) their parental and guardianship rights
2 with respect to their child who has been des-
3 ignated as an unaccompanied alien child; and

4 (B) their right to designate another par-
5 ent, legal guardian, or other qualified adult cus-
6 todian to sponsor and care for such child;

7 (7) to facilitate information sharing by appre-
8 hended parents and legal guardians about any ar-
9 rangements to depart the United States with their
10 consulate, their child, their child's case worker, legal
11 counsel, child advocate, and other adult custodians
12 in advance of their departure;

13 (8) to provide apprehended parents and legal
14 guardians with order of deportation or removal ac-
15 cess to nongovernmental organizations providing as-
16 sistance with locating and reunifying with their
17 child;

18 (9) to provide cost-free transportation of chil-
19 dren separated from their apprehended parents or
20 legal guardians to reunite with them or another par-
21 ent, legal guardian, or other qualified adult custo-
22 dian to which the children consent;

23 (10) to establish a recordkeeping system that
24 will maintain information to aid the reunification of

1 every child separated from an apprehended parent or
2 legal guardian;

3 (11) to provide free telephone calls between ap-
4 prehended parents or legal guardians and their
5 child;

6 (12) to provide legal counsel to children sepa-
7 rated from their apprehended parents or legal
8 guardians and to ensure that every such child is rep-
9 resented by a licensed attorney; and

10 (13) to otherwise assist with the reunification
11 of separated families.

12 (c) WRITTEN NOTIFICATION.—Shortly after the rule
13 is published pursuant to subsection (a), the Secretary of
14 Homeland Security, the Secretary of Health and Human
15 Services, and the Attorney General shall provide each ap-
16 prehended parent or legal guardian who has been sepa-
17 rated from his or her child written notice, in English,
18 Spanish, or another language understandable by the par-
19 ent or legal guardian, upon request, of any rules or guid-
20 ance that may assist them in their efforts to locate and
21 reunify with their child.

22 (d) REUNIFICATION REQUIRED.—DHS and HHS
23 shall ensure immediate reunification of children that re-
24 main separated from their apprehended parent or legal
25 guardian.

1 (e) OTHER REQUIREMENTS.—DHS and HHS
2 shall—

3 (1) issue a privacy impact assessment related to
4 the use of DNA testing under section 402; and

5 (2) establish a process for redressing violations
6 of the requirements under this section.

7 (f) EXEMPTIONS.—DHS and HHS may not reunite
8 an apprehended parent or legal guardian with their child
9 under this section if—

10 (1) the child has been determined to be a victim
11 of trafficking, or is at significant risk of becoming
12 a victim of trafficking, by that apprehended parent
13 or legal guardian, as determined by a Chief Border
14 Patrol Agent or Customs and Border Protection
15 Area Port Director in their official and undelegated
16 capacity;

17 (2) the child appears to be in danger of abuse
18 or neglect at the hands of the apprehended parent
19 or legal guardian;

20 (3) the child is a danger to himself, herself, or
21 others, as determined by a State court or an official
22 from a State or county child welfare agency in his
23 or her official and undelegated capacity; or

1 (4) there is a strong likelihood that the adult is
2 not the apprehended parent or legal guardian of the
3 child.

4 **SEC. 402. DNA TESTING.**

5 (a) **USE OF OTHER TECHNIQUES.**—Before utilizing
6 DNA testing to determine family relationships, DHS and
7 HHS shall use other techniques commonly utilized by
8 United States courts for determining family relationships,
9 including official documents, representations from a wit-
10 ness, parent, relative, or child, and observations of inter-
11 actions between the adult and the child.

12 (b) **DNA TESTING.**—

13 (1) **IN GENERAL.**—DNA testing may not be re-
14 quired as a condition of reunification if alternative
15 means of demonstrating a familial relationship have
16 been established. If reasonable suspicions remain
17 about a familial relationship after exhausting the
18 techniques referred to in subsection (a), DNA test-
19 ing may be used.

20 (2) **PROTOCOLS.**—DHS and HHS shall develop
21 protocols for establishing a familial relationship if an
22 individual does not want to consent to DNA testing
23 or may not have a biological relationship with a
24 child.

1 (3) TYPE OF TEST.—Whenever DNA testing is
2 used, DHS and HHS shall use the least privacy-
3 invasive type of DNA test available to confirm the
4 claimed relationship and may not charge the child or
5 apprehended parent or legal guardian for the costs
6 of conducting such testing.

7 (4) CONSENT.—DHS and HHS shall—

8 (A) obtain the consent of any individual
9 older than 18 years of age before conducting a
10 DNA test;

11 (B) make every effort to obtain the con-
12 sent of a legal guardian before conducting a
13 DNA test on anyone younger than 18 years of
14 age; and

15 (C) destroy DNA samples as soon as pos-
16 sible and not later than 7 days after completing
17 the required DNA matching tests to minimize
18 any potential misuse of genetic information col-
19 lected under this subsection.

20 (e) PROTECTION OF INFORMATION.—

21 (1) IN GENERAL.—If DNA testing is used for
22 the purposes of reunification, DHS and HHS shall
23 ensure the protection of privacy, genetic data, and
24 personal information of children, parents, all individ-
25 uals being tested, and their relatives.

1 (2) OTHER USES PROHIBITED.—DHS, HHS,
2 and private entities may only access, use, or store
3 any personal DNA information collected under this
4 subsection for family reunification purposes and are
5 prohibited from sharing any such information with
6 Federal agencies other than those carrying out the
7 reunification process. Information collected under
8 this section may not be used by the Federal Govern-
9 ment for any other purpose, including criminal or
10 immigration enforcement.

11 (d) DNA MATCH.—

12 (1) REUNIFICATION.—As soon as a DNA
13 match is identified, DHS and HHS shall reunite
14 family members as expeditiously as possible.

15 (2) NO MATCH; NO CONSENT.—A refusal to
16 consent to a DNA test or the failure to identify a
17 match between a child and an apprehended parent
18 may not be used as a basis for concluding that there
19 is no familial relationship between such child and
20 such parent if—

21 (A) the familial relationship is not biologi-
22 cal; or

23 (B) the familial relationship may be estab-
24 lished through alternative means.

1 **SEC. 403. ENHANCED PROTECTIONS FOR SEPARATE FAMI-**
2 **LIES.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-
4 rity shall establish secure alternative programs that incor-
5 porate case management services in each field office of
6 DHS to ensure appearances at immigration proceedings
7 and public safety.

8 (b) ALTERNATIVES TO DETENTION.—

9 (1) CONTRACT AUTHORITY.—The Secretary of
10 Homeland Security shall contract with nongovern-
11 mental, community-based organizations to conduct
12 screening of detainees, provide appearance assist-
13 ance services, and operate community-based super-
14 vision programs. Secure alternatives shall offer a
15 continuum of supervision mechanisms and options,
16 including community support, depending on an as-
17 sessment of each individual's circumstances. The
18 Secretary may contract with nongovernmental orga-
19 nizations to implement secure alternatives that
20 maintain custody over the alien.

21 (2) ELIGIBILITY DETERMINATION.—

22 (A) RELEASE.—The Secretary of Home-
23 land Security shall release each apprehended
24 parent or legal guardian on recognizance, pa-
25 role, or bond, or permit such parent or legal
26 guardian to participate in an alternative to de-

1 tention program, such as the Family Case Man-
2 agement Program authorized under subsection
3 (c), unless the Secretary demonstrates that
4 such participation would create a substantial
5 risk that the apprehended parent or legal
6 guardian is likely to cause harm to himself, her-
7 self, or others.

8 (B) BURDEN OF PROOF.—In order to dem-
9 onstrate that continued detention is necessary,
10 the Secretary shall produce clear and con-
11 vincing evidence of risk factors, including cred-
12 ible and individualized information.

13 (C) APPEAL.—Not later than 72 hours
14 after the Secretary determines that an appre-
15 hended parent or legal guardian is ineligible for
16 an alternative to detention program under this
17 subsection, the parent or legal guardian shall be
18 provided with an opportunity to appeal such de-
19 termination in a hearing before an immigration
20 judge.

21 (c) RESTORATION OF THE FAMILY CASE MANAGE-
22 MENT PROGRAM.—

23 (1) IN GENERAL.—Not later than 7 days after
24 the date of the enactment of this title, the Secretary
25 of Homeland Security shall restore the Family Case

1 Management Program, which shall provide commu-
2 nity supervision and community support services, in-
3 cluding case management services, appearance serv-
4 ices, and screening of aliens who have been detained,
5 to be run through a contract with a not-for-profit
6 entity.

7 (2) CONTRACT.—Any contract for programming
8 or services described in paragraph (1) shall be
9 awarded to a not-for-profit organization with dem-
10 onstrated expertise in meeting the areas specified in
11 paragraph (1).

12 (d) UNACCOMPANIED ALIEN CHILD DESIGNATION.—
13 The Secretary of Homeland Security shall treat a child
14 who has been separated from an apprehended parent or
15 legal guardian and has been designated as an unaccom-
16 panied alien child for the duration of his or her immigra-
17 tion proceedings.

18 (e) AUTOMATIC STAY OF REMOVAL OF APPRE-
19 HENDED PARENTS AND LEGAL GUARDIANS DURING
20 CHILD'S IMMIGRATION PROCEEDINGS.—Until the earlier
21 of the date on which the child's immigration proceedings
22 are concluded or the date on which the child reaches 18
23 years of age, the Secretary of Homeland Security may not
24 remove an apprehended parent or legal guardian of such
25 child from the United States unless the apprehended par-

1 ent or legal guardian, after being afforded the opportunity
2 for legal consultation, agrees to removal.

3 **SEC. 404. CONFIDENTIALITY.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), the Secretary of Homeland Security may not use in-
6 formation obtained or recorded pursuant to this title to
7 assist in immigration enforcement actions taken against
8 any sponsor, potential sponsor, custodian, potential custo-
9 dian, or household member of a child or apprehended par-
10 ent or legal guardian.

11 (b) EXCEPTION.—Subsection (a) does not apply to
12 the use of information described in that subsection about
13 a particular sponsor, potential sponsor, custodian, poten-
14 tial custodian, or household member for purposes of a law
15 enforcement investigation related to—

16 (1) forced labor or human trafficking under
17 section 1589, 1590, or 1591 of title 18, United
18 States Code; or

19 (2) child exploitation under section 2251,
20 2251A, 2252, or 2252A of title 18, United States
21 Code.

22 **SEC. 405. COUNSEL FOR CHILDREN AND VULNERABLE**
23 **ALIENS.**

24 (a) CLARIFICATION REGARDING THE AUTHORITY OF
25 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO

1 ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292 of
2 the Immigration and Nationality Act (8 U.S.C. 1362) is
3 amended—

4 (1) by striking “In any removal proceedings be-
5 fore an immigration judge and in any appeal pro-
6 ceedings before the Attorney General from any such
7 removal proceedings,” and inserting the following:

8 “(a) IN GENERAL.—In a proceeding conducted under
9 any section of this Act,”;

10 (2) in subsection (a), as amended by paragraph

11 (1)—

12 (A) by striking “(at no expense to the Gov-
13 ernment)”;

14 (B) by striking “he shall” and inserting
15 “the person shall”; and

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

17 “(b) ACCESS TO COUNSEL.—The Attorney General
18 may appoint or provide counsel to aliens in any proceeding
19 conducted under any section of this Act. The Secretary
20 of Homeland Security shall ensure that—

21 “(1) aliens have access to counsel inside all im-
22 migration detention and border facilities;

23 “(2) children do not appear before an immigra-
24 tion judge without counsel; and

1 “(3) children have their cases heard individ-
2 ually.”.

3 (b) APPOINTMENT OF COUNSEL FOR CHILDREN AND
4 VULNERABLE ALIENS.—

5 (1) IN GENERAL.—Section 292 of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1362), as amend-
7 ed by subsection (a), is further amended by adding
8 at the end the following:

9 “(c) CHILDREN AND VULNERABLE ALIENS.—Not-
10 withstanding subsection (b), the Attorney General shall
11 appoint counsel, at the expense of the Government if nec-
12 essary, at the beginning of the proceedings or as expedi-
13 tiously as possible, to represent in such proceedings any
14 alien who has been determined by the Secretary of Home-
15 land Security or the Attorney General to be—

16 “(1) a child (as defined in section 101(b)(1));

17 “(2) a particularly vulnerable individual, such
18 as—

19 “(A) a person with a disability; or

20 “(B) a victim of abuse, torture, or violence;

21 or

22 “(3) an individual whose circumstances are
23 such that the appointment of counsel is necessary to
24 help ensure fair resolution and efficient adjudication
25 of the proceedings.

1 “(d) EXTENSION TO CONSOLIDATED CASES.—If the
2 Attorney General has consolidated the case of any alien
3 for whom counsel was appointed under subsection (c) with
4 that of any other alien, and that other alien does not have
5 counsel, then the counsel appointed under subsection (c)
6 shall be appointed to represent such other alien.

7 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
8 is authorized to be appropriated to the Executive Office
9 of Immigration Review of the Department of Justice such
10 sums as may be necessary to carry out this section.”.

11 (2) RULEMAKING.—The Attorney General shall
12 promulgate regulations to implement section 292(c)
13 of the Immigration and Nationality Act, as added by
14 paragraph (1), in accordance with the requirements
15 set forth in section 3006A of title 18, United States
16 Code.

17 **SEC. 406. DEFINITIONS.**

18 In this title:

19 (1) APPREHENDED PARENT OR LEGAL GUARD-
20 IAN.—The term “apprehended parent or legal
21 guardian” means an alien who—

22 (A) is 18 years of age or older;

23 (B) is the parent or legal guardian of an
24 alien child; and

1 (C) was apprehended by DHS, the Depart-
2 ment of Justice, or any other entity authorized
3 to enforce section 275 of the Immigration and
4 Nationality Act (8 U.S.C. 1325).

5 (2) BORDER.—The term “border” means an
6 international border of the United States.

7 (3) CHILD.—The term “child” means an alien
8 who—

9 (A) has not reached 18 years of age; and

10 (B) has no permanent immigration status
11 in the United States.

12 (4) DHS.—The term “DHS” means the De-
13 partment of Homeland Security.

14 (5) HHS.—The term “HHS” means the De-
15 partment of Health and Human Services.

