

AMENDMENT TO H.R. 6136
OFFERED BY MRS. TORRES OF CALIFORNIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Keep Families To-
3 gether Act”.

4 SEC. 2. LIMITATION ON THE SEPARATION OF FAMILIES.

5 (a) IN GENERAL.—An agent or officer of a des-
6 ignated agency shall be prohibited from removing a child
7 from his or her parent or legal guardian, at or near the
8 port of entry or within 100 miles of a border of the United
9 States, unless one of the following has occurred:

10 (1) A State court, authorized under State law,
11 terminates the rights of the parent or legal guard-
12 ian, determines that it is in the best interests of the
13 child to be removed from the parent or legal guard-
14 ian, in accordance with the Adoption and Safe Fam-
15 ilies Act of 1997 (Public Law 105–89), or makes
16 any similar determination that is legally authorized
17 under State law.

18 (2) An official from the State or county child
19 welfare agency with expertise in child trauma and

1 development makes a best interests determination
2 that it is in the best interests of the child to be re-
3 moved from the parent or legal guardian because the
4 child is in danger of abuse or neglect at the hands
5 of the parent or legal guardian, or is a danger to
6 herself or others.

7 (3) The Chief Patrol Agent or the Area Port
8 Director in their official and undelegated capacity,
9 authorizes separation upon the recommendation by
10 an agent or officer, based on a finding that—

11 (A) the child is a victim of trafficking or
12 is at significant risk of becoming a victim of
13 trafficking;

14 (B) there is a strong likelihood that the
15 adult is not the parent or legal guardian of the
16 child; or

17 (C) the child is in danger of abuse or ne-
18 glect at the hands of the parent or legal guard-
19 ian, or is a danger to themselves or others,
20 except that, in the case that a child is removed from
21 his or her parent or legal guardian under this sec-
22 tion, an independent child welfare expert licensed by
23 the State or county in which the child was so re-
24 moved, authorizes the separation not later than 48
25 hours after such removal, and if such expert does

1 not authorize such separation, the child shall be re-
2 united with his or her parent or legal guardian not
3 later than 48 hours after such determination.

4 (b) PROHIBITION ON SEPARATION.—

5 (1) IN GENERAL.—A designated agency may
6 not remove a child from a parent or legal guardian
7 solely for the policy goal of deterring individuals
8 from migrating to the United States or for the pol-
9 icy goal of promoting compliance with civil immigra-
10 tion laws.

11 (2) PENALTY FOR FAMILY SEPARATION.—Any
12 person who knowingly separates a child from his or
13 her parent or legal guardian in violation of this sec-
14 tion, shall be fined not more than \$10,000.

15 (c) DOCUMENTATION REQUIRED.—The Secretary
16 shall ensure that a separation under subsection (a)(3) is
17 documented in writing and includes, at a minimum, the
18 reason for such separation, together with the stated evi-
19 dence for such separation.

20 **SEC. 3. RECOMMENDATIONS FOR SEPARATION BY AGENTS**
21 **OR OFFICERS.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of the enactment of this Act, the Secretary, in con-
24 sultation with the Secretary of Health and Human Serv-
25 ices, shall develop training and guidance, with an empha-

1 sis on the best interests of the child, childhood trauma,
2 attachment, and child development, for use by agents and
3 officers of designated agencies, in order to standardize the
4 implementation of section 2(a)(3).

5 (b) ANNUAL REVIEW.—Not less frequently than an-
6 nually, the Secretary of Health and Human Services shall
7 review the guidance developed under subsection (a) and
8 make recommendations to the Secretary to ensure such
9 guidance is in accordance with current evidence and best
10 practices in child welfare, child development, and child-
11 hood trauma.

12 (c) REQUIREMENT.—The guidance under subsection
13 (a) shall incorporate the presumptions described in section
14 4.

15 (d) ADDITIONAL REQUIREMENTS.—

16 (1) EVIDENCE-BASED.—The guidance and
17 training developed under this section shall incor-
18 porate evidence-based practices.

19 (2) TRAINING REQUIRED.—

20 (A) All agents and officers of designated
21 agencies, upon hire, and annually thereafter,
22 shall complete training on adherence to the
23 guidance under this section.

1 (B) All Chief Patrol Agents and Area Port
2 Directors, upon hire, and annually thereafter,
3 shall complete—

4 (i) training on adherence to the guid-
5 ance under this section; and

6 (ii) 90 minutes of child welfare prac-
7 tice training that is evidence-based and
8 trauma-informed.

9 **SEC. 4. PRESUMPTIONS.**

10 The presumptions described in this section are the
11 following:

12 (1) FAMILY UNITY.—There shall be a strong
13 presumption in favor of family unity.

14 (2) SIBLINGS.—To the maximum extent prac-
15 ticable, the Secretary shall ensure that sibling
16 groups remain intact.

17 (3) DETENTION.—In general, there is a pre-
18 sumption that detention is not in the best interests
19 of families and children.

20 **SEC. 5. REQUIRED POLICY FOR LOCATING SEPARATED**
21 **CHILDREN.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 after the date of the enactment of this Act, the Secretary
24 shall publish final public guidance that describes, with
25 specificity, the manner in which a parent or legal guardian

1 may locate a child who was separated from the parent or
2 legal guardian under section 2(a). In developing the public
3 guidance, the Secretary shall consult with the Secretary
4 of Health and Human Services, immigrant advocacy orga-
5 nizations, child welfare organizations, and State child wel-
6 fare agencies.

7 (b) WRITTEN NOTIFICATION.—The Secretary shall
8 provide each parent or legal guardian who was separated,
9 with written notice of the public guidance to locate a sepa-
10 rated child.

11 (c) LANGUAGE ACCESS.—All guidance shall be avail-
12 able in English and Spanish, and at the request of the
13 parent or legal guardian, either in the parent or legal
14 guardian's native language or in another language the
15 parent or legal guardian understands, and manner that
16 is understandable by the parent or legal guardian.

17 **SEC. 6. REQUIRED INFORMATION FOR SEPARATED FAMI-**
18 **LIES.**

19 (a) IN GENERAL.—Except as provided under sub-
20 section (c), the Secretary of Health and Human Services,
21 in consultation with the heads of other designated agen-
22 cies, on a weekly basis, shall provide the parent or legal
23 guardian of a child who was separated, the following infor-
24 mation, at a minimum:

1 (1) A status report on the child's activities dur-
2 ing the prior week.

3 (2) Information about the education and health
4 of the child, including any medical treatment pro-
5 vided to the child or medical treatment rec-
6 ommended for the child.

7 (3) Information about changes to the child's
8 immigration status.

9 (4) Other information about the child, designed
10 to promote and maintain family reunification, as the
11 Secretary of Health and Human Services determines
12 in his or her discretion.

13 (b) PHONE COMMUNICATION.—Except as provided
14 under subsection (c), the Secretary of Health and Human
15 Services, in consultation with the heads of other des-
16 ignated agencies, on a weekly basis, shall provide the par-
17 ent or legal guardian of a child who was separated with
18 phone communication between the parent or legal guard-
19 ian and his or her child.

20 (c) EXCEPTION.—No information under subsection
21 (a) or phone communication under subsection (b) shall be
22 provided to a parent or legal guardian in the case that
23 a qualified child welfare expert with care and custody of
24 the child, a child's advocate, the child's legal representa-
25 tion, or the child him or herself concludes it is harmful

1 or dangerous to the child to communicate with the parent
2 or legal guardian.

3 **SEC. 7. ANNUAL REPORT ON FAMILY SEPARATION.**

4 Not later than 180 days after the date of the enact-
5 ment of this Act, and every 6 months thereafter, the Sec-
6 retary, in consultation with the heads of other designated
7 agencies, shall submit a report to the committees of jurisdic-
8 tion, describing each instance in which a child was sep-
9 arated from a parent or legal guardian, including the fol-
10 lowing:

11 (1) The relationship of the adult to the child.

12 (2) The age and gender of the adult and child.

13 (3) The length of separation.

14 (4) Whether the adult was charged with a
15 crime, and if the adult was charged with a crime,
16 the type of crime.

17 (5) Whether the adult made a claim for asylum,
18 expressed a fear to return, or applied for other im-
19 migration relief.

20 (6) Whether the adult was prosecuted if
21 charged with a crime and the associated outcome of
22 such charges.

23 (7) The stated reason for, and evidence in sup-
24 port of, the separation.

1 (8) If the child was part of a sibling group at
2 the time of the separation, whether the group has
3 had physical contact and visitation.

4 (9) Whether the child was rendered an unac-
5 panied alien child.

6 (10) Other information in the Secretary's dis-
7 cretion.

8 **SEC. 8. CLARIFICATION OF PARENTAL RIGHTS.**

9 If a child is separated from a parent or legal guard-
10 ian, and a State court has not made a determination that
11 the parental rights have been terminated, there is a pre-
12 sumption that—

13 (1) the parental rights remain intact; and

14 (2) the separation does not constitute an af-
15 firmative determination of abuse or neglect under
16 Federal or State law.

17 **SEC. 9. CLARIFICATION OF EXISTING LAW.**

18 (a) FEDERAL LAW.—Nothing in this Act shall be in-
19 terpreted to supersede or modify Federal child welfare law,
20 where applicable, including the Adoption and Safe Fami-
21 lies Act of 1997 (Public Law 105–89).

22 (b) STATE LAW.—Nothing in this Act shall be inter-
23 preted to supersede or modify State child welfare laws
24 where applicable.

1 **SEC. 10. LIMITATION ON THE PROSECUTION OF ASYLUM**
2 **SEEKERS.**

3 (a) **IN GENERAL.**—An alien who has expressed a
4 credible or reasonable fear of persecution, filed an applica-
5 tion for asylum or withholding of removal, or expressed
6 an intent to file such an application, may not be pros-
7 ecuted under section 275(a) or 276(a) of the Immigration
8 and Nationality Act (8 U.S.C. 1325(a), 1326(a)) until the
9 date on which any such application has been finally adju-
10 dicated, including any appeals thereto.

11 (b) **AFFIRMATIVE DEFENSE.**—In the case that an
12 alien is prosecuted under section 275(a) or 276(a) of the
13 Immigration and Nationality Act (8 U.S.C. 1325(a),
14 1326(a)) in violation of subsection (a), it shall be a de-
15 fense that the alien has expressed a credible or reasonable
16 fear of persecution, filed an application for asylum or
17 withholding of removal, or expressed an intent to file such
18 an application, and that such application has not been fi-
19 nally adjudicated, including any appeals thereto.

20 (c) **TREATY OBLIGATIONS.**—In accordance with the
21 treaty obligations of the United States under Article 31
22 of the United Nations Convention Relating to the Status
23 of Refugees, no alien who has been granted asylum or
24 withholding of removal in the United States may be pros-
25 ecuted under section 275(a) or 276(a) of the Immigration
26 and Nationality Act (8 U.S.C. 1325(a), 1326(a)).

1 **SEC. 11. DEFINITIONS.**

2 In this Act:

3 (1) DESIGNATED AGENCY.—The term “des-
4 ignated agency” means—

5 (A) the Department of Homeland Security;

6 (B) the Department of Justice; and

7 (C) the Department of Health and Human
8 Services.

9 (2) AGENT OR OFFICER.—The term “agent or
10 officer” includes contractors of the Federal Govern-
11 ment.

12 (3) CHILD.—The term “child” means an indi-
13 vidual who—

14 (A) has not reached the age of 18; and

15 (B) has no permanent immigration status.

16 (4) COMMITTEES OF JURISDICTION.—The term
17 “committees of jurisdiction” means—

18 (A) the Committee on the Judiciary and
19 the Committee on Health, Education, Labor,
20 and Pensions of the Senate; and

21 (B) the Committee on the Judiciary and
22 the Committee on Education and the Workforce
23 of the House of Representatives.

24 (5) FINDING.—The term “finding” means an
25 individualized written assessment or screening for-

1 malized as required under section 2(c), and con-
2 sistent with sections 3, 4, and 8.

3 (6) IN DANGER OF ABUSE OR NEGLECT AT THE
4 HAND OF THE PARENT OR LEGAL GUARDIAN.—The
5 term “in danger of abuse or neglect at the hands of
6 the parent or legal guardian” does not include mi-
7 grating to or crossing of a border of the United
8 States.

9 (7) SECRETARY.—Unless otherwise specified,
10 the term “Secretary” means the Secretary of Home-
11 land Security.

