

Humane Enforcement and Legal Protections for Separated Children Act

July 11, 2011

Section 1. Short Title

The title of the bill is the “Humane Enforcement and Legal Protections for Separated Children Act” (HELP Separated Children Act).

Section 2. Definitions

(1) Defines “apprehension” as detention, arrest, custody or any significant deprivation of liberty that occurs under DHS authority, whether by a DHS official or other law enforcement official or entity acting under an agreement with DHS.

(2) Defines “immigration-enforcement activity” as questioning of, apprehension of, detention of or request for or issuance of a detainer for one or more individuals for suspected or confirmed violations of the INA by a DHS official or an entity operating under agreement with DHS.

(3) Defines “SSA” as a state or local social service agency (government or NGO).

Section 3. Apprehension Procedures for Immigration Enforcement-Related Activities

(a) In general – Any immigration enforcement-related activity which results in the apprehension of at least one (1) alien shall comply with the procedures laid out in this section.

(b) Apprehension Procedures -

(1) Conduct an initial review of those apprehended to ascertain whether the individual is an LPR or USC or otherwise lawfully present in the U.S.

(2) If the individual claims to fit in one of the above categories, the claim should be investigated further and the individual should be considered for release.

(3) Notify SSAs within 24 hours before the commencement of an immigration enforcement activity of the specific area of the state that will be affected and of the anticipated language needs of those apprehended.

(4) If SSAs cannot be notified 24 hours before the commencement of an immigration-enforcement related activity notify them within a timely a fashion as soon as possible

(5) Provide SSAs with ongoing confidential access to screen and interview individuals apprehended by DHS or cooperating entities within six hours of the individual's apprehension to determine whether the individual is a member of a vulnerable population as defined in section 4(b) or has other humanitarian concerns; and to offer confidential psychosocial and mental health services.

(6) Notify local law enforcement within 24 hours (or if not possible, within as timely a fashion as possible) of the specific area or state that will be affected by the immigration enforcement related activity.

(7) No later than six hours after apprehension, coordinate with qualified medical personnel to conduct medical screenings so as to identify vulnerabilities that may necessitate release under section 4(c).

(8) Avoid the apprehension of persons on the premises or in the immediate vicinity of safe zones, including schools, hospitals and places of worship.

(9) Before transferring outside the region in which an apprehension took place, determine, based on all information available, if the person is a member of a vulnerable population as described in section 4(b), should be released in accordance with 4(c) and ensure that care arrangements have been made for children or wards.

(10) Provide a toll-free telephone number through which family members of apprehended persons may obtain information about where the individual is detained and report information relevant to release under section 4(c).

(11) Provide apprehended parents, legal guardians or primary caregivers with confidential and toll-free telephone calls to arrange childcare within 2 hours of the screening, information regarding legal service providers who can offer advice regarding child welfare and custody determinations, and information about state and local child welfare providers.

(12) Ensure DHS and cooperating entities do not: interrogate or screen individuals in the immediate presence of children; interrogate, arrest or detain any child apprehended with his parents without the presence or consent of a parent, family member, legal guardian, or legal counsel; or compel or request children to translate for other individuals.

(13) Provide all DHS personnel and cooperating entities with detailed instructions as to what steps to take if they encounter members of a vulnerable population.

(14) Ensure the best interests of children are considered in decisions and actions related to the detention, transfer or release. There is a preference for family unity whenever appropriate.

(15) Ensure that a sufficient number of independent certified interpreters fluent in the languages spoken by more than 5 percent of the target population are available for in-

person translation and that DHS and cooperating entities utilize appropriate translation services when necessary.

(16) Permit nonprofit legal service providers and attorneys to offer free legal services to individuals subject to an immigration enforcement-related activity at the time of the apprehension of such individuals.

(17) Provide legal orientation presentations for any individual apprehended through an immigration enforcement related activity through the Legal Orientation Program administered by the Executive Office for Immigration Review.

(c) Nondisclosure and Retention of Information About Apprehended Individuals and Their Children –

- (1) Information regarding an apprehended individual that is collected by child welfare agencies and NGOs during screenings described in subsection 5(b) may not be disclosed except pursuant to written authorization from the individual
- (2) Notwithstanding paragraph (1) child welfare agencies and NGOs may submit a recommendation to DHS and cooperating entities pursuant to section 3(b)(5) and may disclose information that is necessary to protect the safety of the child, to prevent death or bodily harm or to allow for the application of subsection (b)(9)(B).

Section 4. Basic Protections for Vulnerable Populations

(a) In general - Not later than 48 hours after the commencement of an immigration enforcement-related activity, requires DHS to determine if each individual apprehended belongs to a vulnerable group. Information regarding vulnerabilities and eligibility for release shall be posted in detention facilities and the detainee handbook.

(b) Vulnerable Population Groups - Vulnerable populations eligible for release or a decision not to detain include: individuals with serious medical or mental health needs or disability; pregnant or nursing women; individuals apprehended with one or more of their children and their children; sole custodial parents, sole legal guardians, or individuals with family members who are ill or require the assistance of a caregiver; children as defined in INA §101(b)(1); individuals over 65; victims of abuse, violence, crime, or human trafficking; individuals who have been referred for a credible fear interview, a reasonable fear interview, or an asylum hearing; individuals who have applied or intend to apply for asylum, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; individuals who have non-frivolous claim to United States citizenship, lawful permanent resident status, or lawful status in the United States; individuals who are eligible for relieve under any provision of the INA; any other group designated in regulations or guidance promulgated by the Secretary of Homeland Security.

(c) Eligibility for Release

(1) Requires DHS or cooperating entities to release vulnerable individuals within 72 hours on recognizance, parole, reasonable bond, or into a community-based non-custodial alternatives to detention program (not electronic monitoring) unless i) the individual is subject to mandatory detention under 235(b) or 236(c), or 236A; ii) the individual poses a danger to others or a risk to national security; or iii) the individual is a flight risk and any risk of flight cannot be mitigated by supervision or bond.

(2) For individuals who do not meet the requirements listed above, provides that the individual may be considered for an alternatives to detention program that maintains custody over the individual, such as through electronic monitoring or heightened supervision. Requires the Secretary of DHS to make an individualized determination about the need for electronic monitoring and to review that decision each month.

- Allows individuals detained under 236(c) to be placed into electronic monitoring or other secure custodial alternatives.

(3) Requires all decisions regarding custody to be made in writing, to specify the reasons for the decision and to be served upon the individual within 72 hours. All decisions to detain are subject to redetermination by an immigration judge.

Section 5. Custody Determinations

(a) Section 236 of the INA is amended –

(1) and (2) redesignate lettering of various subsections of 236

(3) – adding a subsection (g) Right to Counsel for individuals apprehended under INA section 236. Individuals may be represented by counsel of their choosing, at no expense to the Federal Government, while subject to any immigration enforcement related activity, including interviews, processing appointments, booking and intake, hearing, and any proceedings that may result in a custody or removal decision.

(b)

(1) adds a new section (f) to 236- Notice and Charges:

- DHS must first consider whether the individual warrants a favorable exercise of prosecutorial discretion.
- If the individual does not warrant favorable exercise, DHS must file the Notice to Appear or other relevant charging document with the closest immigration court to where the individual was apprehended and serve the notice on each individual.
- Requires that any individual detained for more than 48 hours under this section be brought before an immigration judge for a custody determination not later than 72 hours after detention commences, unless the individual waives such right in accordance with subsection (3)

- The requirements under this subsection may be waived for 7 days if the individual enters into a written agreement with DHS and is eligible for immigration benefits or demonstrates eligibility for a defense against removal.

(2) Nothing in the new section 236 (f) above repeals section 236A.

Section 6. Child Welfare Services for Children Separated From Parents Detained or Removed From the United States for Immigration Violations

(a) State Plan Requirements - Amends the Social Security Act to require that State child welfare agencies incorporate protections for separated children into their child welfare plan. *(As in other child welfare plan requirements states will be eligible to receive federal reimbursement for 50% of administrative costs and 75% of training costs associated with compliance with this requirement)*. State child welfare agencies **shall**:

(A) Create and implement protocols to guide employees in handling cases involving separated children. These protocols shall take into account the best interest of the child and shall include a preference for family unity whenever appropriate.

(B) Develop and implement MOUs or protocols with federal, state and local government agencies to facilitate communication between these entities and separated children; their parent, guardian, relative or family members; family courts; child welfare providers; and counsel representing separated children or their parent, guardian or relative.

(C) Develop and implement joint protocols and training with law enforcement agencies, including guidance on ensuring prompt care arrangements for children, to minimize trauma to children as a result of the apprehension of their parent, guardian or relative.

(D) Ensure that case managers are capable of communicating in the native language of the separated child and family or that an interpreter is provided at no cost to the child or child's family.

(E) Require that the best interest of the child, including a preference for family unity whenever appropriate, be considered in all decisions and actions relating to the care, custody and placement of the child; All related decisions and must be based on clearly articulated factors that do not include conclusions about immigration status or pending immigration proceedings.

(F) Coordinate with DHS to ensure that parents of separated children are given adequate time to obtain travel documents, health and school records and other information if they want their children to join them in their country of origin.

(G) To the greatest extent possible and consistent with the best interest of the child, preserve the privacy and confidentiality of all information gathered in the course of administering care, custody, placement and follow-up services for separated children; Such information should not be disclosed to other government agencies or any person

other than the parent, guardian or relative, except that The head of a state agency may disclose information to law enforcement if such disclosure is authorized by a child who is 18 and is consistent with the best interest of the child, or if such disclosure would prevent imminent and serious harm to another individual. Any disclosure must be recorded and placed in the child's case file.

(H) At least once a year update and publish a list of entities in that state who are qualified to provide linguistically appropriate guardian and legal representation services for separated children.

(b) Additional Information to be Included in Case Plan - Requires states to keep additional information in separated children's case plan including the location of the parent, guardian or relative and a record of each disclosure of information made to a government agency or person other than the child's parent, guardian or relative.

(c) Separated Child Defined - Defines "separated child" as a citizen, lawful permanent resident or alien lawfully present in the U.S. who is under the responsibility of a State foster care program and who has a parent, legal guardian or primary caretaker relative detained as a result of immigration enforcement or who has been removed from the US as a result of violating immigration law.

(d) Effective Date - States must include such protections in the child welfare plan by the 1st day of the 1st quarter beginning 1 year after the date of enactment.

Section 7. Report on Protections for Vulnerable Populations Impacted by Immigration Enforcement Activities

(a) Requirements for Reports - Within a year of enactment of the Act, the Secretary of Homeland Security shall submit a report to Congress describing the impact of immigration enforcement activities and fugitive operations on US citizens, lawful permanent residents, individuals otherwise lawfully present in the US and, where possible, undocumented aliens present in the US.

(b) Content – Various statistics and information regarding the people who are detained particularly parents, guardians or sole caregivers and other vulnerable populations, including statistics on children left behind, children who are able to join their parents, family notification; the length of time until released; notification of procedures and policies accountability; disciplinary measures taken for violations of procedures; information about transfers and access to legal counsel; and details about alternatives to detention programs used and their success.

Section 8. VULNERABLE POPULATION AND CHILD WELFARE TRAINING FOR IMMIGRATION ENFORCEMENT OFFICERS

(a) Mandatory Training

(1) The Secretary of DHS, in consultation with the Secretary of HHS and independent child welfare experts shall mandate live, specialized training of all Federal personnel, relevant state personnel and SSAs who come into contact with vulnerable populations in legal authorities, policies and procedures pertaining to humanitarian and due process protections.

(2) Vulnerable Populations – Relevant personnel shall be trained to work with vulnerable populations, including identification vulnerable populations and individuals who may be eligible for asylum or SIJS.

(3) Best Practices – Requires periodic and continuing training on best practices and changes in the law, policies and procedures for vulnerable populations.

(4) Memorandum of Understanding – The Secretary of DHS shall require all law enforcement entities under agreement with DHS to establish MOUs with SSAs to ensure availability of humanitarian and due process protections for vulnerable populations as well as the best ways to cooperate and facilitate ongoing communications.

Section 9. ACCESS FOR PARENTS, LEGAL GUARDIANS, AND, PRIMARY CAREGIVER RELATIVES.

(a) In General - All detention facilities operated by or under agreement with DHS shall take steps to ensure that the best interest of children whose parent, legal guardian, or primary caregiver relative is detained can be considered.

(b) Training - DHS, in consultation with HHS, DOJ, DOS and independent family law experts shall develop and mandate live, specialized, and continuing training of all detention personnel in legal authorities, policies and procedures related to ensuring that parents, legal guardians, and primary caregiver relatives have access to their children, family courts, consular officers, and staff of State social services agencies.

(c) Access to Children, Local and State Courts, Child Protective Services, and Consular Officials - The Secretary of DHS shall ensure that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age:

(1) Receive daily free and confidential phone calls with their children;

(2) Enjoy regular contact visits with their children;

(3) Can fully participate (in person when possible) in all family court and other proceedings impacting custody of their children;

(4) Can comply with all family court orders impacting custody of their child;

- (5) Have regular, on-site access to reunification programming, including parenting classes;
- (6) Are provided with contact information for child protective services and family courts in all fifty states, the District of Columbia, and all U.S. territories and are granted free, confidential, and unlimited telephone access to child protective services and family courts to report abuse, abandonment or neglect, to ensure that the best interests of the child, including a preference for family unity where appropriate, can be considered;
- (7) Enjoy regular and confidential, in-person and phone access to consular officials and access to U.S. passport applications;
- (8) Have adequate time before their removal to obtain birth certificates and other documents necessary for their child to accompany or join them in their country of origin;
- (9) The Secretary of DHS shall facilitate detained parents', legal guardians', and primary caregiver relatives' ability to reunify with their under 18 children at the time of removal, including providing information about travel arrangements to the state social services agencies or other caregivers.

Section 10. AUTHORIZATION OF APPROPRIATIONS.

Congress is authorized to appropriate such sums as are necessary to implement this Act.

Section 11. REGULATIONS.

Secretary shall promulgate regulations to implement the provisions of this Act no later than 6 months following enactment.