H. R. 1

To reunite families separated at or near ports of entry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ESPAILLAT introduced the following bill; which was referred to the Committee on ________________________

A BILL

To reunite families separated at or near ports of entry, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Reunite Every Unaccompanied Newborn Infant, Toddler and other children Expeditiously Act” or the “REUNITE Act”.

5 SEC. 2. DEFINITIONS.

8 In this Act:
(1) Apprehended Parent or Legal Guardian.—The term “apprehended parent or legal guardian” means an alien who—

(A) is 18 years of age or older;

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

(C) was apprehended by DHS, the Department of Justice, or any other entity authorized to enforce section 275 of the Immigration and Nationality Act (8 U.S.C. 1325).

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

(3) Child.—The term “child” means an alien who—

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

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

(4) DHS.—The term “DHS” means the Department of Homeland Security.

(5) HHS.—The term “HHS” means the Department of Health and Human Services.

SEC. 3. REUNIFICATION OF SEPARATED FAMILIES.

(a) Rulemaking.—

(1) Rule.—Not later than 10 days after the date of the enactment of this Act, the Secretary of
Homeland Security and the Secretary of Health and Human Services, after immediate consultation with humanitarian organizations, child welfare organizations, State child welfare agencies, and States contiguous with the border with Mexico, shall promulgate and publish a rule through a direct final rule that specifically describes the coordinated efforts that DHS and HHS will undertake to aid an apprehended parent or legal guardian in locating and reuniting with any children separated from them at or near the port of entry, or within 100 miles of the border, pursuant to applicable law.

(2) DEVELOPMENT; SERVICES; PUBLICATION.—
The rule promulgated pursuant to paragraph (1) shall—

(A) be developed to protect the best interests of affected children;

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

(C) be made publicly available in writing and on the websites of DHS and HHS.
(b) COVERAGE OF JOINT RULE.—The rule published pursuant to subsection (a) shall outline the coordinated efforts of DHS and HHS, including efforts—

(1) to develop and conduct family tracing procedures, in cooperation with nongovernmental experts in child welfare best practices;

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

(A) to obtain daily-updated information about the location of their child and all scheduled immigration proceedings for their child; and

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

(3) to facilitate substantial daily access of nongovernmental case workers, child advocates, and legal counsel to children separated from their apprehended parents and legal guardians to represent these children’s best interests in custody decisions and immigration proceedings;

(4) to provide for humanitarian organizations and State and local child welfare agencies in the ju-
risdictions in which the children are located to con-

duct unannounced, independent weekly inspections

of all DHS and HHS facilities at which children

who are separated from their apprehended parents

or legal guardians are in custody;

(5) to coordinate with the Department of State

and embassies and consulates of foreign govern-

ments to locate apprehended parents and legal

guardians of children who have departed from the

United States;

(6) to provide clear notice to apprehended par-
ents and legal guardians of their legal rights, includ-

ing—

(A) their parental and guardianship rights

with respect to their child who has been des-

ignated as an unaccompanied alien child; and

(B) their right to designate another par-

ent, legal guardian, or other qualified adult cus-

todian to sponsor and care for such child;

(7) to facilitate information sharing by appre-

hended parents and legal guardians about any ar-

rangements to depart the United States with their

consulate, their child, their child’s case worker, legal

counsel, child advocate, and other adult custodians

in advance of their departure;
(8) to provide apprehended parents and legal guardians with order of deportation or removal access to nongovernmental organizations providing assistance with locating and reunifying with their child;

(9) to provide cost-free transportation of children separated from their apprehended parents or legal guardians to reunite with them or another parent, legal guardian, or other qualified adult custodian to which the children consent;

(10) to establish a recordkeeping system that will maintain information to aid the reunification of every child separated from an apprehended parent or legal guardian;

(11) to provide free telephone calls between apprehended parents or legal guardians and their child;

(12) to provide legal counsel to children separated from their apprehended parents or legal guardians and to ensure that every such child is represented by a licensed attorney; and

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

(c) **Written Notification.**—Shortly after the rule is published pursuant to subsection (a), the Secretary of
Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide each apprehended parent or legal guardian who has been separated from his or her child written notice, in English, Spanish, or another language understandable by the parent or legal guardian, upon request, of any rules or guidance that may assist them in their efforts to locate and reunify with their child.

(d) **Reunification Required.**—DHS and HHS shall ensure immediate reunification of children that remain separated from their apprehended parent or legal guardian.

(e) **Other Requirements.**—DHS and HHS shall—

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

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

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

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

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

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

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

SEC. 4. DNA TESTING.

(a) USE OF OTHER TECHNIQUES.—Before utilizing DNA testing to determine family relationships, DHS and HHS shall use other techniques commonly utilized by United States courts for determining family relationships, including official documents, representations from a witness, parent, relative, or child, and observations of interactions between the adult and the child.

(b) DNA TESTING.—

(1) IN GENERAL.—DNA testing may not be required as a condition of reunification if alternative means of demonstrating a familial relationship have
been established. If reasonable suspicions remain about a familial relationship after exhausting the techniques referred to in subsection (a), DNA testing may be used.

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

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

(4) Consent.—DHS and HHS shall—

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

(B) make every effort to obtain the consent of a legal guardian before conducting a DNA test on anyone younger than 18 years of age; and

(C) destroy DNA samples as soon as possible and not later than 7 days after completing
the required DNA matching tests to minimize any potential misuse of genetic information collected under this subsection.

(c) Protection of Information.—

(1) In general.—If DNA testing is used for the purposes of reunification, DHS and HHS shall ensure the protection of privacy, genetic data, and personal information of children, parents, all individuals being tested, and their relatives.

(2) Other uses prohibited.—DHS, HHS, and private entities may only access, use, or store any personal DNA information collected under this subsection for family reunification purposes and are prohibited from sharing any such information with Federal agencies other than those carrying out the reunification process. Information collected under this section may not be used by the Federal Government for any other purpose, including criminal or immigration enforcement.

(d) DNA Match.—

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

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

(A) the familial relationship is not biological; or

(B) the familial relationship may be established through alternative means.

SEC. 5. ENHANCED PROTECTIONS FOR SEPARATE FAMILIES.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish secure alternative programs that incorporate case management services in each field office of DHS to ensure appearances at immigration proceedings and public safety.

(b) ALTERNATIVES TO DETENTION.—

(1) CONTRACT AUTHORITY.—The Secretary of Homeland Security shall contract with nongovernmental, community-based organizations to conduct screening of detainees, provide appearance assistance services, and operate community-based supervision programs. Secure alternatives shall offer a continuum of supervision mechanisms and options, including community support, depending on an assessment of each individual’s circumstances. The
Secretary may contract with nongovernmental organizations to implement secure alternatives that maintain custody over the alien.

(2) ELIGIBILITY DETERMINATION.—

(A) RELEASE.—The Secretary of Homeland Security shall release each apprehended parent or legal guardian on recognizance, parole, or bond, or permit such parent or legal guardian to participate in an alternative to detention program, such as the Family Case Management Program authorized under subsection (c), unless the Secretary demonstrates that such participation would create a substantial risk that the apprehended parent or legal guardian is likely to cause harm to himself, herself, or others.

(B) BURDEN OF PROOF.—In order to demonstrate that continued detention is necessary, the Secretary shall produce clear and convincing evidence of risk factors, including credible and individualized information.

(C) APPEAL.—Not later than 72 hours after the Secretary determines that an apprehended parent or legal guardian is ineligible for an alternative to detention program under this
subsection, the parent or legal guardian shall be provided with an opportunity to appeal such determination in a hearing before an immigration judge.

(c) **RESTORATION OF THE FAMILY CASE MANAGEMENT PROGRAM.**—

(1) **IN GENERAL.**—Not later than 7 days after the date of the enactment of this Act, the Secretary of Homeland Security shall restore the Family Case Management Program, which shall provide community supervision and community support services, including case management services, appearance services, and screening of aliens who have been detained, to be run through a contract with a not-for-profit entity.

(2) **CONTRACT.**—Any contract for programming or services described in paragraph (1) shall be awarded to a not-for-profit organization with demonstrated expertise in meeting the areas specified in paragraph (1).

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

(c) AUTOMATIC STAY OF REMOVAL OF APPRE-
HENDED PARENTS AND LEGAL GUARDIANS DURING
CHILD’S IMMIGRATION PROCEEDINGS.—Until the earlier
of the date on which the child’s immigration proceedings
are concluded or the date on which the child reaches 18
years of age, the Secretary of Homeland Security may not
remove an apprehended parent or legal guardian of such
child from the United States unless the apprehended par-
ent or legal guardian, after being afforded the opportunity
for legal consultation, agrees to removal.

SEC. 6. CONFIDENTIALITY.

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

(b) EXCEPTION.—Subsection (a) does not apply to
the use of information described in that subsection about
a particular sponsor, potential sponsor, custodian, poten-
tial custodian, or household member for purposes of a law
enforcement investigation related to—
(1) forced labor or human trafficking under section 1589, 1590, or 1591 of title 18, United States Code; or
(2) child exploitation under section 2251, 2251A, 2252, or 2252A of title 18, United States Code.

SEC. 7. ESTABLISHMENT OF OFFICE FOR LOCATING AND REUNITING CHILDREN WITH APPREHENDED PARENTS OR LEGAL GUARDIANS.

(a) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of Health and Human Services (referred to collectively in this section as the “Secretaries”) shall jointly establish an inter-agency office, which shall be known as the “Office for Locating and Reuniting Children with Parents” (referred to in this section as the “Office”) and shall be responsible for expediting and facilitating the reunification of children and apprehended parents or legal guardians after entering the United States.

(b) DUTIES.—The Office shall—

(1) expeditiously implement guidance designated for its jurisdiction;
(2) establish 24-hour priority data and information communication networks between HHS, DHS, and the Department of Justice; and
(3) identify and immediately inform Congress if
the Office determines that insufficient appropria-
tions, or any other statutory or regulatory condition
hinders the safe and timely reunion of separated
children with their apprehended parents or legal
guardians.

(c) REPORT.—The Office shall submit a weekly re-
port to Congress that includes—

(1) the number and location of children in the
physical custody of DHS or HHS who have been
separated from an apprehended parent or legal
guardian;

(2) the number of such children who have been
physically reunified with their apprehended parent
or legal guardian;

(3) the physical location of apprehended par-
ents and legal guardians who have yet to be reunited
with their child, including the apprehended parents
and legal guardians who have been deported without
their child;

(4) the number of such children who have not
yet been physically reunited with their apprehended
parent or legal guardian; and

(5) an outline of the progress made in imple-
menting the rule published pursuant to section 3(a).
SEC. 8. SAVINGS PROVISIONS.

(a) FEDERAL LAW.—Nothing in this Act may be construed to supersede or modify—

(1) the William Wilberforce Trafficking Victims Protection Act of 2008 (8 U.S.C. 1232 et seq.);

(2) the Stipulated Settlement Agreement filed in the United States District Court for the Central District of California on January 17, 1997 (CV 85–4544–RJK) (commonly known as the “Flores Settlement Agreement”);

(3) the Homeland Security Act of 2002 (Public Law 107–296); or

(4) any applicable Federal child welfare law, including the Adoption and Safe Families Act of 1997 (Public Law 105–89).

(b) STATE LAW.—Nothing in this Act may be construed to supersede or modify any applicable State child welfare laws.

SEC. 9. REALLOCATION OF DHS APPROPRIATIONS.

(a) IN GENERAL.—Of the amount allocated to Immigration and Customs Enforcement for fiscal year 2019 for enforcement, detention, and removal operations, $50,000,000 shall be reallocated to carry out sections 3 and 5(a).
(b) Reunification.—Not less than $15,000,000 of the amount reallocated under subsection (a) shall be made available to carry out section 3.

SEC. 10. COUNSEL FOR CHILDREN AND VULNERABLE ALIENS.

(a) Clarification Regarding the Authority of the Attorney General to Appoint Counsel to Aliens in Immigration Proceedings.—Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended—

(1) by striking “In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings,” and inserting the following:

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

(2) in subsection (a), as amended by paragraph (1)—

(A) by striking “(at no expense to the Government)”; and

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

(3) by adding at the end the following:

“(b) Access to Counsel.—The Attorney General may appoint or provide counsel to aliens in any proceeding...
conducted under any section of this Act. The Secretary of Homeland Security shall ensure that—

“(1) aliens have access to counsel inside all immigration detention and border facilities;

“(2) children do not appear before an immigration judge without counsel; and

“(3) children have their cases heard individually.”.

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

(1) IN GENERAL.—Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), as amended by subsection (a), is further amended by adding at the end the following:

“(c) CHILDREN AND VULNERABLE ALIENS.—Notwithstanding subsection (b), the Attorney General shall appoint counsel, at the expense of the Government if necessary, at the beginning of the proceedings or as expeditiously as possible, to represent in such proceedings any alien who has been determined by the Secretary of Homeland Security or the Attorney General to be—

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

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

“(A) a person with a disability; or
“(B) a victim of abuse, torture, or violence;

or

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

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

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

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

SEC. 11. ESTABLISHMENT OF LIMIT ON BOND.

Section 236(a) of the Immigration and Nationality Act (8 U.S.C. 1226(a)) is amended—
(1) in paragraph (2)(A), by striking “bond of at least $1,500” and inserting “subject to paragraph (4), bond in an amount that is not more than $1,500”; and

(2) by adding at the end the following:

“(4) The limit on the amount of bond in paragraph (2)(A) shall not apply with respect to an alien who has committed an aggravated felony.”.