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To prohibit the use of funds for the operation or construction of family detention centers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Merkley (for himself, Mr. Booker, Mr. Markey, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To prohibit the use of funds for the operation or construction of family detention centers, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Freedom for Families Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Federal Government has intentionally separated and detained families seeking asylum in the United States purportedly to deter other foreign
nationals from coming to the United States in the future. Such method of deterrence is ineffective, contrary to human rights norms, and likely violates United States and international law.

(2) On September 7, 2018, the Secretary of Homeland Security issued a proposed rule entitled “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children” (83 Fed. Reg. 45486 (September 7, 2018)) that attempted to circumvent a 1997 court agreement commonly known as the “Flores Settlement Agreement” to undermine current legal protections for children and families and increase family detention.

(3) Detaining families in family residential centers can have long-term consequences on children, such as—

(A) difficulty regulating emotions, achieving developmental milestones, and forming healthy relationships;

(B) increased rates of anxiety, depression, and post-traumatic stress disorder; and

(C) heightened risks of suicide and self-harm.

(4) When family units are placed in family detention facilities—
(A) family members experience feelings of isolation and increased stress;

(B) the ability of the parents to care for their children is compromised by the constraints of detention; and

(C) the detention setting creates barriers to—

(i) accessing counsel and legal services; and

(ii) successfully obtaining relief from removal.

(5) Nondetention-based practices, such as family case management and community-based programs, are effective and humane alternatives to family detention.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on the Judiciary and the Committee on Appropriations of the Senate; and
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(B) the Committee on the Judiciary and
the Committee on Appropriations of the House
of Representatives.

(2) DETAIN.—With respect to an individual, the
term “detain” means to compel an individual to stay
in a location from which the individual cannot leave
on his or her own free will.

(3) FAMILY RESIDENTIAL CENTER.—The term
“family residential center” means a facility that de-
tains 1 or more noncitizen families and that is di-
rectly operated by U.S. Immigration and Customs
Enforcement or by a governmental or nongovern-
mental contractor for U.S. Immigration and Cus-
toms Enforcement.

(4) NONCITIZEN.—The term “noncitizen”
means an individual who is not a citizen or national
of the United States.

(5) SECRETARY.—The term “Secretary” means
the Secretary of Homeland Security.

SEC. 4. PROHIBITION ON USE OF FUNDS FOR FAMILY DE-
TENTION CENTERS.

(a) IN GENERAL.—Notwithstanding any other provi-
sion of law, none of the amounts made available after the
date of the enactment of this Act for any fiscal year may
be obligated or expended to operate or construct a family
residential center, whether directly operated by U.S. Immigration and Customs Enforcement or by another governmental or nongovernmental contractor.

(b) Previously Authorized Expenditures.—

(1) In General.—Beginning on the date that is 30 days after the date of the enactment of this Act, none of the amounts made available before such date of enactment for the purpose of operating or constructing a family residential center may be used for such purpose.

(2) Prohibition on Transfer.—None of the amounts made available before the date of the enactment of this Act may be reprogrammed or transferred for the purpose of operating or constructing a family residential center.

(c) Alternatives to Detention.—

(1) Transfer of Funds.—Amounts obligated to operate a family residential center as of the date of the enactment of this Act shall be transferred for the implementation and development of appropriate community-based nondetention programs consistent with international best practices for noncitizen families.

(2) Nonprofit Entity Contracting Partner.—
(A) IN GENERAL.—The Secretary shall contract with 1 or more community-based qualified nonprofit service providers that have the trust of their communities for the operation of appropriate community-based nondetention programs.

(B) LIMITATION ON INDIVIDUALS WHO MAY SERVE AS DESIGNEES.—The Secretary may only designate the responsibility under subparagraph (A) to an individual employed by the Office of the Secretary.

(3) PARTICIPATION.—A noncitizen family entering the United States that is apprehended by the Secretary may be placed in a nondetention program under this subsection if the Secretary makes an individualized determination that participation in the program will facilitate the family’s compliance with the immigration laws (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))).

(4) LEGAL ORIENTATION.—To facilitate participant compliance with legal requirements, a nondetention program under this subsection shall include—
(A) a legal orientation for each participant in the program; and

(B) meaningful access to counsel.

(5) CASE MANAGEMENT TRAINING.—

(A) IN GENERAL.—The Secretary shall provide case management training for all personnel of a nondetention program under this subsection, including personnel of—

(i) the Department of Homeland Security; and

(ii) the nonprofit entity contracted under paragraph (2).

(B) BEST PRACTICES.—The training under subparagraph (A) shall—

(i) be based on international and social welfare best practices relating to immigration and refugee case management; and

(ii) include consultation with civil society experts with expertise in case management.

(d) RULE OF CONSTRUCTION.—Nothing in this Act may be construed to endorse the separation of noncitizen families who enter the United States at or between ports of entry.
SEC. 5. FEASIBILITY REVIEW OF TRANSFERRING ALTERNATIVES TO DETENTION PROGRAM.

The Secretary shall review the feasibility of transferring case management programs out of the purview of U.S. Immigration and Customs Enforcement and the Department of Homeland Security.