

117TH CONGRESS
1ST SESSION

S. _____

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The Federal Government has intentionally
9 separated and detained families seeking asylum in
10 the United States purportedly to deter other foreign

1 nationals from coming to the United States in the
2 future. Such method of deterrence is ineffective, con-
3 trary to human rights norms, and likely violates
4 United States and international law.

5 (2) On September 7, 2018, the Secretary of
6 Homeland Security issued a proposed rule entitled
7 “Apprehension, Processing, Care, and Custody of
8 Alien Minors and Unaccompanied Alien Children”
9 (83 Fed. Reg. 45486 (September 7, 2018)) that at-
10 tempted to circumvent a 1997 court agreement com-
11 monly known as the “Flores Settlement Agreement”
12 to undermine current legal protections for children
13 and families and increase family detention.

14 (3) Detaining families in family residential cen-
15 ters can have long-term consequences on children,
16 such as—

17 (A) difficulty regulating emotions, achiev-
18 ing developmental milestones, and forming
19 healthy relationships;

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

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

24 (4) When family units are placed in family de-
25 tention facilities—

1 (A) family members experience feelings of
2 isolation and increased stress;

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

6 (C) the detention setting creates barriers
7 to—

8 (i) accessing counsel and legal serv-
9 ices; and

10 (ii) successfully obtaining relief from
11 removal.

12 (5) Nondetention-based practices, such as fam-
13 ily case management and community-based pro-
14 grams, are effective and humane alternatives to fam-
15 ily detention.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) APPROPRIATE COMMITTEES OF CON-
19 GRESS.—The term “appropriate committees of Con-
20 gress” means—

21 (A) the Committee on the Judiciary and
22 the Committee on Appropriations of the Senate;
23 and

1 (B) the Committee on the Judiciary and
2 the Committee on Appropriations of the House
3 of Representatives.

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

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

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

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

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

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of law, none of the amounts made available after the
24 date of the enactment of this Act for any fiscal year may
25 be obligated or expended to operate or construct a family

1 residential center, whether directly operated by U.S. Im-
2 migration and Customs Enforcement or by another gov-
3 ernmental or nongovernmental contractor.

4 (b) PREVIOUSLY AUTHORIZED EXPENDITURES.—

5 (1) IN GENERAL.—Beginning on the date that
6 is 30 days after the date of the enactment of this
7 Act, none of the amounts made available before such
8 date of enactment for the purpose of operating or
9 constructing a family residential center may be used
10 for such purpose.

11 (2) PROHIBITION ON TRANSFER.—None of the
12 amounts made available before the date of the enact-
13 ment of this Act may be reprogrammed or trans-
14 ferred for the purpose of operating or constructing
15 a family residential center.

16 (c) ALTERNATIVES TO DETENTION.—

17 (1) TRANSFER OF FUNDS.—Amounts obligated
18 to operate a family residential center as of the date
19 of the enactment of this Act shall be transferred for
20 the implementation and development of appropriate
21 community-based nondetention programs consistent
22 with international best practices for noncitizen fami-
23 lies.

24 (2) NONPROFIT ENTITY CONTRACTING PART-
25 NER.—

1 (A) IN GENERAL.—The Secretary shall
2 contract with 1 or more community-based quali-
3 fied nonprofit service providers that have the
4 trust of their communities for the operation of
5 appropriate community-based nondetention pro-
6 grams.

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

12 (3) PARTICIPATION.—A noncitizen family enter-
13 ing the United States that is apprehended by the
14 Secretary may be placed in a nondetention program
15 under this subsection if the Secretary makes an indi-
16 vidualized determination that participation in the
17 program will facilitate the family’s compliance with
18 the immigration laws (as defined in section 101(a)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1101(a))).

21 (4) LEGAL ORIENTATION.—To facilitate partici-
22 pant compliance with legal requirements, a non-
23 detention program under this subsection shall in-
24 clude—

1 (A) a legal orientation for each participant
2 in the program; and

3 (B) meaningful access to counsel.

4 (5) CASE MANAGEMENT TRAINING.—

5 (A) IN GENERAL.—The Secretary shall
6 provide case management training for all per-
7 sonnel of a nondetention program under this
8 subsection, including personnel of—

9 (i) the Department of Homeland Se-
10 curity; and

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

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

15 (i) be based on international and so-
16 cial welfare best practices relating to immi-
17 gration and refugee case management; and

18 (ii) include consultation with civil soci-
19 ety experts with expertise in case manage-
20 ment.

21 (d) RULE OF CONSTRUCTION.—Nothing in this Act
22 may be construed to endorse the separation of noncitizen
23 families who enter the United States at or between ports
24 of entry.

1 **SEC. 5. FEASIBILITY REVIEW OF TRANSFERRING ALTER-**
2 **NATIVES TO DETENTION PROGRAM.**

3 The Secretary shall review the feasibility of transfer-
4 ring case management programs out of the purview of
5 U.S. Immigration and Customs Enforcement and the De-
6 partment of Homeland Security.