

Children’s Safe Welcome Act of 2024

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Title I: Procedures and Temporary Placements Following Apprehension

Sec.101.Prohibition on Family Separation

- *Policy:* Accompanied noncitizen children apprehended must remain physically together with parent or legal guardian at all times unless:
 - The child temporarily requests privacy;
 - A determination is made based on clear and convincing evidence that the parent or legal guardian is an imminent threat to U.S. national security;
 - A child protection professional documents, based on clear and convincing evidence, that continued care by the parent or legal guardian would result in serious emotional or physical damage to the child.
- In the case of separation, and as soon as practicable after the child is safe:
 - For HHS: the child will be returned to the individual from whom they were separated;
 - For DHS: the individual will be released in accordance with the law
 - DHS will:
 - Notify parents, legal guardians, and accompanied children of their right to challenge separation and their private right of action to seek review before a federal district court;
 - Provide a copy of any determination or other documentation.

Sec.102.Protections for Noncitizen Children

- *Policy:* Amends Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
 - Changes language so that “unaccompanied alien child” is replaced by “noncitizen child”;
 - Inserts language to ensure that licensed child protection professionals and Federal field specialists are onsite at relevant locations;
 - Outlines the qualifications and duties of child protection professionals;
- Details the process for release of children apprehended with parents, legal guardians, or nonparent family members;
 - Prohibits operation of family detention facilities and outlines limitations of CBP custody;
 - Outlines designations, transfers, evaluations, and staffing requirements, including duties of various staff, for reception centers;
 - Outlines release decision, release, and post-release processes;
 - Outlines requirements of transportation;
 - Provides that noncitizen child determinations may not be reevaluated or revoked

Sec.103.Nonadversarial Asylum Processing for Noncitizen Children

- *Policy:* Amends Section 208(b)(3)(C) of the Immigration and Nationality Act to include a subsection on nonadversarial asylum processing for all children

Sec.104.Standards for CBP Detention of Noncitizen Children

- *Policy:* CBP may not detain a noncitizen child for the purpose of initial processing for more than 72 hours.
 - The best interests of the noncitizen child and family unity must be prioritized.

Sec.105.Standards for CBP and Border Protection Facilities Housing Noncitizen Children

- *Policy:* Establishes standards for CBP facilities to ensure that each facility is safe, sanitary, and promotes an appropriate and healthy environment for children;

- Requires a review and revision of, and compliance with the National Standards on Transport, Escort, Detention, and Search;
- Ensures appropriate staffing, medical screenings and care, language services, transportation, food and water, hygiene, and other basic needs within CBP facilities;
- Outlines requirements for age assessment determinations.

Sec.106.Modification of Term “Asylum Officer” to Exclude CBP Officers

- *Policy:* Amends Section 235(b)(1)(E) of the Immigration and Nationality Act to clarify that an asylum officer must be “employed by the Refugee, Asylum, and International Operations Directorate of U.S. Citizenship and Immigration Services”.

Title II: Standards for HHS Custody of Noncitizen Children

Subtitle A – Standards for Foster Care Homes and Child Care Facilities

Sec.201.Operation of Foster Care Homes and Child Care Facilities

- *Policy:* Child care facilities must be state-licensed and maintained as non-secure facilities.

Sec.202.Notice of Rights

- *Policy:* A notice of children’s rights will be developed, posted, and distributed in accessible format and language by the Ombudsperson’s Office.

Sec.203.Staffing and Training

- *Policy:* Overview of staffing requirements, including the presence of Federal field specialists and case management specialists at each facility.
 - Outlines training for staff, including the development of training materials.

Subtitle B – Services for Noncitizen Children

Sec.211.Required Services

- *Policy:* Establishes appropriate care standards (ex. suitable living accommodations, physical and mental health services, case management services, adaptation services, religious and spiritual services, legal services, and guidelines for contact with family members and reasonable privacy,etc.) for each noncitizen child, including individual needs assessments;
 - Overview of discipline guidelines and recordkeeping requirements.

Sec.212.Evaluation for Disability

- *Policy:* Disability services and accommodations evaluations will be available for noncitizen children who present an indication of a disability.
 - Overview of recordkeeping requirements.

Sec.213.Education

- *Policy:* Language-appropriate educational instruction will be offered to noncitizen children, consistent with licensing and academic standards of each State.
 - Individual Education Plans (IEPs) will be provided for eligible noncitizen children.
 - Educational programs will address personal, social, emotional, intellectual, and employment skills.

Sec.214.Recreation

- *Policy:* Adequate recreational opportunities will be offered, including physical activity, structured leisure time, and language-appropriate reading materials.

Subtitle C – Placement of Children

Sec.221.Phasing Out Large Congregate Care Facilities

- *Policy:* Within two years after enactment of the Children’s Safe Welcome Act, noncitizen children may not be placed in large congregate care facilities, with enumerated exceptions.

- No Federal funds will be available for large congregate care facilities housing noncitizen children;
- A phased plan to eliminate the use of large congregate care facilities must be developed, implemented, and submitted to Congress no later than 90 days after enactment;
- Funding for nongovernmental organizations will be increased to provide transitional support.

Sec.222.Least Restrictive Setting

- *Policy:* A noncitizen child must be placed in the least restrictive setting that most approximates a family and in which the child’s special needs, if any, may be met consistent with the best interests and special needs of the child.

Sec.223.Foster Family Care

- *Policy:* A noncitizen child must be placed in the least restrictive setting that most approximates a family, to best meet any special needs, and to be within reasonable proximity to the child’s immigration proceedings.
 - Overview of policies for transitional foster care and placements expected to exceed 30 days, including specific policies for children with disabilities or mental/behavioral health-related needs.
 - Requires background checks to be conducted for each resident of a foster care placement for a noncitizen child.
 - Prohibits noncitizen children from being placed in a foster home if a resident of a prospective placement has a conviction for child abuse or trafficking, or has been convicted of any offense that has a direct and immediate impact on the safety of the noncitizen child.

Sec.224.Additional Requirements Relating to Children with Disabilities and Children with Mental Health Needs

- *Policy:* The release of children with disabilities to sponsors will be prioritized to ensure that such children may receive trauma-informed services tailored to their needs in the community, rather than in custody.
 - Children with disabilities will have access to services while in custody and will be given appropriate support and resources.

Sec.225.Minimizing Transfers

- *Policy:* The transfer of noncitizen children will be minimized to ensure that children remain in the least restrictive, most family-like settings possible and stay with their siblings.
 - Prior to a transfer, children and their legal counsel must be notified no less than 48 hours before the transfer occurs, with enumerated exceptions.

Sec.226.Restrictive Placements

- *Policy:* Restrictive placements for noncitizen children include staff-secure facilities, therapeutic staff-secure facilities, and settings other than childcare facilities, influx facilities, or licensed family foster care.
 - An administrative placement review hearing will be conducted in the case of a transfer of a noncitizen child.
 - Overview of the parameters around notification, timing, and procedures of placement review hearings, including language access, record of proceedings, review by ombudsperson, and more.
 - Requirements of and limitations on placement in restrictive placements;
 - Explicit exclusion of secure facilities;
 - Overview of general services to be provided in restrictive placements, including monthly review hearings, as well as specific placement requirements for noncitizen children with disabilities.

Sec.227.Judicial Review of Placement

- *Policy:* noncitizen children or their parent, legal guardian, or prospective sponsor may seek judicial review in district court of the child’s type of child care placement or sponsorship determination.

Subtitle D – Family Reunification and Standards Relating to Sponsors

Sec.231.Family Reunification Efforts by Office of Refugee Resettlement

- *Policy:* When noncitizen children are in custody, they will be provided individualized, on-site case management and family reunification services.
 - Overview of the limitation on remote services, development of procedures to expedite the reunification of noncitizen children, and the order of preference for release.

Sec.232.Standards Relating to Sponsors

- *Policy:* Sponsor requirements must have a substantial and direct impact on the safety on noncitizen children and must not discriminate against children or prospective sponsors in consideration of their application.
 - In addition to national origin, immigration status, language, religion, sexual orientation, sex, gender identity, gender expression, color, and race, a prospective sponsor may not be denied sponsorship solely due to economic status or an absence of a pre-existing relationship with the noncitizen child.
 - The legal rights of prospective sponsors will be taken into consideration to ensure that the processes for a child’s safe release do not interfere with these rights.
 - A sponsor assessment will be conducted to ensure the opportunity to address the concerns of the noncitizen child and ensure the safety of the child.
 - An annual evaluation will be completed to determine if current policies and practices create unnecessary barriers to release or result in delays for children’s prompt release.
 - In determining sponsorship, a decision must be made within 7 days of the receipt of a complete sponsor application and the effect of denial of applications on the noncitizen child will be taken into consideration.
 - An opportunity for an administrative sponsorship hearing will be provided if an application is denied or unanswered for more than 7 days, and prompt and language-accessible notices of such hearing must be provided;
 - A hearing will occur within 7 to 14 days after the notice, will be presided over by a neutral fact finder, with appropriate interpretation services available, and will be approved or denied within 2 business days.
 - Upon denial, further review by an Ombudsperson and/or judicial review may be requested.
 - Prohibits sponsorship of a noncitizen child if a sponsor or household member of the sponsor has a conviction for child abuse or trafficking, or has been convicted of any offense that has a direct and immediate impact on the safety of the noncitizen child.

Sec.233.Special Considerations Relation to Release of Children with Disabilities

- *Policy:* Release of a noncitizen may not be delayed based solely on the disabilities of the child or a pending evaluation for services.
 - Denying a sponsor’s application due to alleged inability of the sponsor to meet the needs of the child requires specific documented evidence.
 - Upon denial of release of a noncitizen child, a review of such determination will be carried out; if a sponsor is not identified, the noncitizen child will be placed in therapeutic foster care, foster care, or the Refugee Minor program.

Subtitle E – Release

Sec.241.Procedures for Release

- *Policy:* Noncitizen children will be released from custody without unnecessary delay and as quickly as can be safely accomplished
 - Upon release, noncitizen children must be provided with their records and medication (if applicable).
 - A noncitizen child cannot be taken back into custody after release.

Sec.242.Post-Release Services

- *Policy:* Post-release services may not be uniformly required to be in place for a noncitizen child before that child is released to their sponsor.
 - In limited circumstances in which a case management specialist determines that a noncitizen child's unique vulnerabilities require a higher and immediate level of preventative action, certain post-release services may be required.
 - Post-release services shall be provided to noncitizen children which may include assistance in school enrollment, support obtaining medical records, ensuring access to medical support services, and ensuring appropriate medical care for children with special needs.

Sec.243.Individuals Attaining 18 Years of Age

- *Policy:* If a noncitizen is not released to a sponsor before the age of 18, they will be released on an order of recognizance, unless the Secretary of Homeland Security demonstrates by clear and convincing evidence that the individual is not eligible to be released.
 - If deemed ineligible, the noncitizen will be eligible to participate in noncustodial alternatives to detention programs and will have continued access to services.
- noncitizen children who are over the age of 17 years and 6 months or who are unlikely to be released to a sponsor before turning 18 will have plans developed to find appropriate organizational sponsors and social support services
- Custody may be extended for a period of up to 3 years after a noncitizen turns 18 for individuals:
 - Who have not been reunified but have available family members, those who have identified sponsors, those who have been admitted to long-term foster care or residential treatment centers, or those without reunification options and no change in immigration status, *and* who have elected to remain in custody, with the recommendation of their case manager; and
 - Until the noncitizen is reunified with a family member, placed with a sponsor, or adjudicated with respect to immigration status.
- A noncitizen may not be apprehended, arrested, transferred, taken into ICE custody, or removed from the United States based solely on turning 18 years old.
 - Individuals who entered the United States as a child will not lose access to due process, legal relief, or housing based solely on turning 18 years old.

Sec.244.Custody Review by Ombudsperson

- *Policy:* Certain individuals may request, the Ombudsperson to investigate why a certain noncitizen is still in custody.
 - Requires the Ombudsperson to be notified when noncitizen children remain in custody for 45 days or longer.

Title III: EMERGENCIES AND INFLUXES

Sec.301.Sense of Congress

- *Policy:* Before opening or expanding an influx facility, all other avenues must be explored, to place noncitizen children in the least restrictive, state-licensed setting that most approximates a family and in which the special needs of the child may be met consistent with the child's best interests.

Sec.302.Definitions

- *Policy:* Overview of the terms “emergency” and “operational capacity”.

Sec.303.Placement

- *Policy:* If an emergency or influx prevents prompt placement of unaccompanied noncitizen children in child care facilities, unaccompanied noncitizen children will be placed in other government-licensed programs and will be released as expeditiously as possible.
 - noncitizen children may not be placed in emergency or temporary facilities for more than 20 days;
 - If a noncitizen child cannot be released to a sponsor within 20 days, the child will be transferred to a child care facility, unless the transfer would prolong the total length of custody by more than 24 hours.
- Overview of limitations on transfers to influx facilities
- Noncitizen children will remain with their siblings or other relatives under the age of 18 and will have unlimited visitation with each other in influx facilities.

Sec.304.Planning for Emergencies and Influxes

- *Policy:* Within six months of implementation, a plan will be developed to maintain and expand emergency capacity in licensed foster care homes and small congregate care facilities for housing noncitizen children in order to eliminate the need for influx facilities.
 - A supplemental placement list will be developed and maintained of licensed and compliant facilities and, in the case, of exceeded capacity, additional placements will be located and reunification/release will be expedited

Sec.305.Influx Facility Standards and Staffing

- *Policy:* Overview of standards of influx facilities, including compliance requirements, staffing ratio requirements, case management requirements, telephone call access, legal services access, education and recreation requirements, and medical and mental health services.
 - Overview of influx facility and staffing standards that must be met in order to contract with each facility, including licensing and appropriate background checks of staff members.

Sec.306.Monitoring and Oversight

- *Policy:* Monthly site visits will be conducted to evaluate compliance of each influx facility with the required standards
- Tours by approved stakeholders are permitted.

Title IV: LEGAL REPRESENTATION FOR UNACCOMPANIED NONCITIZEN CHILDREN

Sec.401.Legal Orientation Presentations and Legal Screenings

- *Policy:* Within 10 days of transfer to custody, and before release, an unaccompanied noncitizen child will receive a free legal orientation presentation and legal screening conducted by a legal services provider.
 - The release of an unaccompanied noncitizen child to a sponsor may not be prohibited based solely on the child not having received a legal orientation or screening.

Sec.402.Legal Representation

- *Policy:* Unaccompanied noncitizen children will be represented by counsel at every stage of removal proceedings.
 - Unaccompanied noncitizen children in custody will have access to a private and confidential meeting space to meet with their legal counsel, and will be able to contact their counsel at any time.

- Counsel will have prompt, reasonable, and regular direct communication with their client’s case managers, coordinators, and Federal field specialists, as well as timely responses to requests for information.

Title V: APPOINTMENT OF CHILD ADVOCATES AND IMPROVEMENTS TO IMMIGRATION COURTS

Sec.501.Appointment of Child Advocates

- *Policy:* Unaccompanied noncitizen children will be appointed independent child advocates.
 - Child advocates will submit individual best interest recommendations based on law, policy, medical/behavioral health, and relevant social science to any federal or state agency making a decision with respect to the best interests of a specific unaccompanied noncitizen child.
 - Funding for child advocate services will be increased and services will be expanded.
 - Appointed child advocates will have timely access to unaccompanied noncitizen children’s records, and communications between child advocates and unaccompanied noncitizen children are confidential.

Sec.502.Immigration Court Improvements

- *Policy:* The Attorney General will increase the total number of immigration judges by at least 75 during FY23 and will ensure that each immigration judge is highly qualified and trained to conduct fair and impartial hearings, without preference to a candidate who has prior service in the Federal Government.
 - The Attorney General will also increase the total number of judicial law clerks by 75 and the total number of support staff by 300.
 - The Attorney General will ensure adequate technological and security resources, as well as appropriate facilities to conduct immigration proceedings.

Title VI: OVERSIGHT, MONITORING, AND ENFORCEMENT

Sec.601.Office of the Ombudsperson for Noncitizen Children in Immigration Custody

- *Policy:* An Office of the Ombudsperson for Noncitizen Children will be established within the Department of Health and Human Services to monitor and oversee compliance with this Act.
 - This Office will be independent of other Offices.
 - The Office will be headed by an Ombudsperson, who will be appointed after solicitation of recommendations from stakeholders
 - The Ombudsperson will not have been an employee of the Office of Refugee Resettlement or the Department of Homeland Security in the preceding two years.
 - The term will be no more than 4 years with the option of consecutive terms.
 - Overview of duties and authorities of the Ombudsperson, including the establishment of regional offices, the hiring of subject matter experts and other clerical personnel, the monitoring of sites and influx facilities, and any investigations, hearings, case assistance/review, stakeholder meetings, information gathering, subpoenas, and subsequent reports required or deemed necessary by the Ombudsperson.
- The Ombudsperson will have unobstructed access to any facility at which a noncitizen child is detained, in order to conduct information gathering for site visits.
 - The Ombudsperson will be provided a private and confidential space in which the Ombudsperson may interview noncitizen children and staff.

- Overview of reporting mechanisms, public hearing procedures, and individual case investigations.
- Any complainants, witnesses, and records will maintain their confidentiality.
- The Ombudsperson, their employees, and the records of the Office may not be deposed or subpoenaed in a judicial or administrative proceeding regarding matters that have come to attention in the exercise of official duties of the Office, except for enumerated exceptions.

Sec.602.Data Collection and Reporting

- Not less than weekly, the Department of Homeland Security will submit certain information to the Ombudsperson, including biographical and contact information, as well as the date of apprehension and release/transfer for each noncitizen child in custody
 - Certain data will be publicized monthly, including the number of noncitizen children in custody, and the median and average number of hours in such custody for each such child, calculated to include all such children, disaggregated by facility and Border Patrol sector.
- The Office of Refugee Resettlement will develop a systemic data collection system to collect and maintain information, including but not limited to the number and demographic characteristics of noncitizen children entering and exiting custody, the extent and nature of assistance provided by government programs, and the release rates and barriers to release for noncitizen children.
 - The above information will be shared with the Ombudsperson and certain non- personally identifiable data will be publicized.

Sec.603.Enforcement

- *Policy:* Audits will be conducted annually to assess compliance of child care facilities and determine if each child care facility has maintained its state licensure.
 - If found in violation, the child care facility will be notified and will have the opportunity to appeal, but without a successful appeal, will be debarred or suspended from contracting with the Department of Health and Human Services for no less than three years

Sec.604.Protection from Retaliation

- *Policy:* Legal service providers, child advocates, noncitizen children, or any other entity having pursued judicial review, civil action, or filing complaints with the Ombudsperson on behalf of a noncitizen child, or their parent, legal guardian, or prospective sponsor shall be protected from retaliatory actions.

Sec.605.Mandatory Access to Detention Facilities for Members of Congress

- *Policy:* Overview of ensuring that Members of Congress and accompanying members of the press have access to any facility in which detained individuals are housed.
 - Limitations to this policy, including the use of still or video cameras and access to personally identifying information.

Title VII: NONDISCRIMINATION

Sec.701.Fair and Equal Treatment

- *Policy:* Ensures that all noncitizen children are treated fairly and equally, and provided with inclusive, safe, and nondiscriminatory services.

Sec.702.Responsibilities of Care Providers

- Noncitizen children’s care providers must ensure that children are treated fairly and equally, treated with dignity and respect, are cared for in an inclusive and respectful environment, and are not subject to discrimination or harassed.
 - Overview of special considerations for indigenous and LGBTQI children.

Title VIII: INFORMATION SHARING AND DATA PROTECTION

Sec.801.Separation of Records

- *Policy:* All noncitizen children’s personal information and case files/records are maintained separate and apart from the children’s immigration files and are not accessible by the Department of Homeland Security.

Sec.802.Prohibition on Use for Denial of Relief or in Removal Proceedings

- *Policy:* A noncitizen child’s case file/record will not be used to deny an application for relief or to facilitate involuntary removal in any proceeding.

Sec.803.Disclosure

- *Policy:* All noncitizen children’s personal information and case files/records are confidential and may only be disclosed if the child has consulted with legal counsel and provided informed consent for disclosure.
 - If the noncitizen child is under the age of 12 years, consent must be provided by the parent, legal guardian, or sponsor.

Sec.804.Prohibitions on Information Sharing

- *Policy:* Information about a noncitizen child in custody may not be shared without consent and may not be used for purposes of immigration enforcement or relief from removal proceedings, with enumerated exceptions.

Sec.805.Counseling Records

- *Policy:* Information shared by a noncitizen child in counseling sessions may not be shared, unless the child presents a documented imminent threat to themselves or any other individual, or has provided consent.
 - Juvenile information, including records of children separated from family, will remain confidential regardless of the child’s immigration status

Sec.806.Data Protection for Sponsors

- *Policy:* Any information required of prospective sponsors or any data collected in pursuit of sponsorship may not be disclosed for any purpose other than reunification of family, placement of a child with a sponsor, or oversight by Congress.

Title IX: MISCELLANEOUS PROVISION

Sec.901.Rule of Construction

- *Policy:* Nothing above may be used to limit the rights of any children in federal immigration custody or to affect the application of, abrogate, modify, replace, preclude, or limit the *Flores* settlement agreement.