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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To require certain protections for any dependent child whose parent is a
detained alien, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. JAYAPAL introduced the following bill; which was referred to the
Committee on _____

A BILL

To require certain protections for any dependent child whose
parent is a detained alien, 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 “Orlin’s Law”.

5 **SEC. 2. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) family units should be considered a “hu-
8 manitarian or significant public benefit” as it relates
9 to the authority of the Secretary of Homeland Secu-

1 rity to grant parole under section 212(d)(5) of the
2 Immigration and Nationality Act; and

3 (2) being an alien parent shall not be consid-
4 ered a negative factor when determining child cus-
5 tody.

6 **SEC. 3. SPECIAL RULE FOR PARENTS.**

7 (a) PARENTS.—Not later than 2 hours after taking
8 an alien into custody under the immigration laws (as such
9 term is defined in section 101 of the Immigration and Na-
10 tionality Act (8 U.S.C. 1101)), and prior to transferring
11 the alien to a detention facility, the Secretary of Homeland
12 Security shall request information from the alien on
13 whether the alien is a covered parent and document the
14 response.

15 (b) LIMITATION ON DETENTION.—If the Secretary of
16 Homeland Security determines that an alien who is in cus-
17 tody under the immigration laws is a covered parent, the
18 Secretary shall release such alien unless an immigration
19 judge determines that the Secretary has demonstrated, by
20 clear and convincing evidence, that the alien poses an indi-
21 vidualized risk to the safety of any other person or the
22 community that cannot be mitigated through placement
23 in a supervised release program.

24 (c) SAFETY RISKS.—In the case that a covered par-
25 ent poses an individualized risk described in subsection

1 (b), the Secretary of Homeland Security shall determine
2 the least restrictive placement for the individual, including
3 placement in a community-based supervision program
4 under section 236(g) of the Immigration and Nationality
5 Act.

6 (d) REQUIREMENT.—In the case that an alien is in
7 custody under the immigration laws, the Secretary of
8 Homeland Security shall inquire about the parental sta-
9 tus, or a change in parental status, of such alien during
10 any interaction relating to the determination of the alien's
11 immigration status and no less than once each month.

12 **SEC. 4. IDENTIFYING DETAINED PARENTS.**

13 (a) DETAINED ALIENS.—Any covered parent in the
14 custody of the Department of Homeland Security shall be
15 allowed to—

16 (1) make telephone calls, without charge, to ar-
17 range for the care of each of their dependent chil-
18 dren prior to any transfer, including in preparation
19 for removal;

20 (2) arrange regular in person visits with each of
21 their dependent children; and

22 (3) make daily telephone and video calls to each
23 of their dependent children, without charge.

24 (b) LIMITATION ON TRANSFERS.—The Secretary of
25 Homeland Security may not transfer a covered parent who

1 is detained under the immigration laws to an area of re-
2 sponsibility of U.S. Immigration and Customs Enforce-
3 ment that is a different area of responsibility than the
4 area in which the covered parent was initially detained or
5 the habitual place of residence of the child of such parent,
6 except in exceptional circumstances or if legally required.

7 **SEC. 5. ATTENDING COURT PROCEEDINGS.**

8 (a) IN GENERAL.—The Secretary of Homeland Secu-
9 rity shall ensure that any covered parent has the oppor-
10 tunity to—

11 (1) initiate or participate fully and, to the ex-
12 tent practicable, in person in—

13 (A) any family court proceeding;

14 (B) any other proceeding that may impact
15 the right of the individual to take custody of
16 their dependent child; and

17 (C) any case planning activity;

18 (2) make confidential telephone calls, without
19 charge, to any legal counsel, relevant child welfare
20 agency or applicable contracted entity or provider,
21 community and family members, or family court as
22 often as necessary to ensure that the best interests
23 of such dependent child, including a preference for
24 family unity whenever appropriate, may be consid-

1 ered in a child welfare agency or family court pro-
2 ceeding;

3 (3) fully comply with each family court or child
4 welfare agency order impacting the custody of such
5 dependent child;

6 (4) submit United States passport applications
7 or other relevant travel document applications for
8 the purpose of obtaining travel documents for such
9 dependent child;

10 (5) have timely and free access to a notary pub-
11 lic for purposes of applying for a passport for such
12 dependent child or executing guardianship or other
13 agreements to ensure the safety of such dependent
14 child;

15 (6) have adequate time and opportunity before
16 removal to obtain passports, apostilled birth certifi-
17 cates, travel documents, medical records, educational
18 records, and other necessary records on behalf of
19 such dependent child if such child will accompany
20 the individual to the country of removal or eventu-
21 ally join the individual in such country;

22 (7) have adequate time and access to any docu-
23 ments in the possession of the Secretary of Home-
24 land Security that are necessary to make arrange-
25 ments for the dependent child's care, travel, or safe-

1 ty, including access to any identity document and
2 passport of the covered parent;

3 (8) have adequate time and notice regarding
4 their dependent child's travel arrangements with re-
5 spect to removal, including the time of travel, report-
6 ing location, manner of transportation, and who is
7 facilitating such travel; and

8 (9) share information regarding such travel ar-
9 rangements with his or her legal counsel, consulate,
10 dependent child, child welfare agencies, or other
11 caregivers before the alien departs the United
12 States.

13 (b) IMMIGRATION COURT PROCEEDINGS.—During a
14 proceeding before an immigration court the immigration
15 judge shall, as the judge determines necessary, appoint
16 counsel to a covered parent, at the expense of the Govern-
17 ment, during family integrity custody review proceedings.

18 **SEC. 6. PARENTAL RIGHTS.**

19 If a dependent child is physically separated from a
20 covered parent as a result of such parent's detention under
21 the immigration laws, and a State court has not made a
22 determination that the parental rights of such parent have
23 been terminated, there is a presumption that—

24 (1) the parental rights remain intact; and

(2) such separation does not constitute an affirmative determination of abandonment, abuse, or neglect under Federal or State law.

SEC. 7. REMOVAL OF DETAINED PARENTS.

(a) REQUEST FOR REMOVAL WITH DEPENDENT CHILD.—The Secretary of Homeland Security shall provide oral and written notice to each covered parent who is subject to a final order of removal, in each covered parent’s preferred language, that the alien may, in writing—

(1) request removal from the United States with, and to the same country as, their dependent children; and

(2) amend a request described in paragraph (1).

(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to give effect to any request under this section made under duress or any other coercive condition.

SEC. 8. TRAINING AND NATIONAL COORDINATOR.

(a) ESTABLISHMENT.—There is established within the headquarters of U.S. Immigration and Customs Enforcement an Office of Detained Parent Coordination, headed by the National Coordinator.

(b) RESPONSIBILITIES.—The National Coordinator shall be responsible for the following:

1 (1) Serving as the primary point of contact and
2 subject-matter expert for Enforcement and Removal
3 Operations personnel of U.S. Immigration and Customs
4 Enforcement regarding State child welfare or
5 guardianship issues related to detained aliens.

6 (2) Conducting data collection and analysis, including
7 evaluating, on an ongoing basis, information
8 collected from a U.S. Immigration and Customs Enforcement
9 records system.

10 (3) Assigning and maintaining field points of
11 contact for matters pertaining to detained covered
12 parents.

13 (4) Providing guidance to each field point of
14 contact assigned under paragraph (3) on—

15 (A) participation in family court, child welfare,
16 or guardianship proceedings for detained
17 covered parents;

18 (B) visitation protocols for detained covered
19 parents; and

20 (C) facilitation of participation by detained
21 covered parents in child welfare services and
22 programs.

23 (5) Ensuring that detained covered parents are
24 provided the opportunity to—

1 (A) consult with counsel and consular offi-
2 cials;

3 (B) communicate with family courts, child
4 welfare personnel, and family members or
5 friends to arrange guardianship or care, in ac-
6 cordance with sections 4 and 5;

7 (C) obtain travel documents or make nec-
8 essary travel arrangements, for the dependent
9 child of such alien; and

10 (D) access necessary services to meet case
11 plans, status and permanency goals in child
12 welfare proceedings.

13 (6) Coordinating with relevant Enforcement
14 and Removal Operations personnel, field office direc-
15 tors, State or local court or child welfare personnel,
16 legal counsel representing covered parents, and con-
17 sular officials to facilitate the timely response to any
18 issue or complaint received by U.S. Immigration and
19 Customs Enforcement regarding the parental or
20 guardianship interests of a detained alien.

21 (7) Establishing and maintaining a national,
22 publicly available designated mechanism through
23 which family courts, child welfare agencies, legal
24 counsel, and other stakeholders may provide the Sec-
25 retary of Homeland Security with notice of family

1 court proceedings, child welfare matters, case plan-
2 ning activities, or other proceedings affecting a cov-
3 ered parent's custodial rights or relationship with
4 their dependent child, for the purpose of facilitating
5 the parent's timely notice of and meaningful partici-
6 pation in such proceedings.

7 (8) Facilitating the removal of covered parents
8 with each dependent child, as requested.

9 (9) Assisting with obtaining travel documents
10 for dependent children as needed.

11 (10) Coordinating with Federal and State or
12 local child welfare agencies, caretakers, foreign gov-
13 ernments, or other appropriate stakeholders.

14 (11) Establishing travel procedures (that do not
15 use contractors) for a dependent child to travel and
16 be conveyed safely to the detention facility in which
17 the covered parent is located for reunification and
18 travel prior to removal.

19 (c) TRAINING.—The Secretary of Homeland Security,
20 in consultation with independent child welfare and family
21 law experts, shall develop and provide training on the pro-
22 tections required under this Act to each employee of the
23 Department of Homeland Security, including detention fa-
24 cility staff who interact with covered parents.

1 (d) STAFF.—The Office of Detained Parent Coordi-
2 nation shall be staffed by not less than 8 full-time employ-
3 ees.

4 (e) QUALIFICATION OF NATIONAL COORDINATOR.—
5 The National Coordinator shall have not less than 10
6 years of experience in child welfare, family court matters,
7 or guardianship matters.

8 (f) ONLINE DETAINEE LOCATOR SYSTEM.—The Sec-
9 retary of Homeland Security shall ensure that the online
10 detainee locator system maintained by the Department, or
11 any successor system, is updated to include information
12 on whether aliens were referred by State and local law en-
13 forcement agencies prior to transfer into the custody of
14 U.S. Immigration and Customs Enforcement.

15 **SEC. 9. COMMUNITY-BASED CASE MANAGEMENT PROGRAM.**

16 Section 236 of the Immigration and Nationality Act
17 (8 U.S.C. 1226) is amended by adding at the end the fol-
18 lowing:

19 “(g) COMMUNITY-BASED CASE MANAGEMENT PRO-
20 GRAM.—The Secretary of Homeland Security shall estab-
21 lish, outside of the purview of U.S. Immigration and Cus-
22 toms Enforcement, a community-based case management
23 program that—

24 “(1) provides alternatives to detaining aliens;
25 and

1 “(2) offers a continuum of community-based
2 support options and services, including—
3 “(A) case management;
4 “(B) access to—
5 “(i) social services;
6 “(ii) medical and mental health serv-
7 ices;
8 “(iii) housing;
9 “(iv) transportation; and
10 “(v) legal services; and
11 “(C) provides services in the appropriate
12 language.”.

13 **SEC. 10. REPORTING REQUIREMENTS.**

14 (a) IN GENERAL.—On a quarterly basis, the Sec-
15 retary of Homeland shall publish on the Department of
16 Homeland Security website—

17 (1) the number of covered parents that were—

18 (A) detained by U.S. Immigration and
19 Customs Enforcement;

20 (B) transferred to the custody of the De-
21 partment of Homeland Security from a State or
22 local law enforcement agency;

23 (C) supported by the Secretary to make
24 custody arrangements for each of their depend-

1 ent children immediately after being taken into
2 custody; and

3 (D) supported by the Director of U.S. Im-
4 migration and Customs Enforcement to make
5 custody arrangements while in U.S. Immigra-
6 tion and Customs Enforcement custody;

7 (2) the number of such aliens in any ongoing
8 proceeding, disaggregated by type of proceeding in-
9 cluding family court, child welfare, or guardianship
10 proceeding;

11 (3) the number of such aliens with respect to
12 which U.S. Immigration and Customs Enforcement
13 facilitated participation in such proceedings;

14 (4) the minimum, maximum, average, and me-
15 dian duration for which covered parents who are de-
16 tained by U.S. Immigration and Customs Enforce-
17 ment are in the custody;

18 (5) information on the placement of dependent
19 children whose parent is a detained alien, including
20 placement in foster care; and

21 (6) the number of dependent children removed
22 with their parent, disaggregated by the citizenship
23 status and age of such children.

24 (b) SUBMISSION TO CONGRESS.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, and
3 every 180 days thereafter, the Secretary of Home-
4 land Security shall submit a report that contains the
5 information collected under subsection (a) for the
6 preceding 180-day period to—

7 (A) the Committee on the Judiciary, Com-
8 mittee on Homeland Security and Govern-
9 mental Affairs, and the Committee on Health,
10 Education, Labor, and Pensions of the Senate;
11 and

12 (B) the Committee on the Judiciary, Com-
13 mittee and Homeland Security, and the Com-
14 mittee on Education and Workforce of the
15 House of Representatives.

16 (2) INITIAL REPORT.—The initial report sub-
17 mitted under paragraph (1) shall include a detailed
18 summary of the efforts of the Secretary to carry out
19 this Act, including a description of the manner in
20 which the Secretary plans collect and store the data
21 required to be included in each report.

22 (3) SUBSEQUENT REPORTS.—Each subsequent
23 report submitted under paragraph (1) shall include,
24 for the preceding 180-day period—

1 (A) the number employees of the Depart-
2 ment, coordinating entities, and detention facili-
3 ties provided annual training under section 8;
4 and

5 (B) the number of new employees of the
6 Department, coordinating entities, and deten-
7 tion facilities who have been provided an initial
8 training under that section.

9 (c) METHODS.—In carrying out this section, the Sec-
10 retary shall ensure that—

11 (1) the methods for collecting information are
12 consistent from year to year so as to enable the
13 tracking of trends across years; and

14 (2) personally identifiable information is pro-
15 tected.

16 **SEC. 11. REMEDIES.**

17 (a) IN GENERAL.—Notwithstanding the immigration
18 laws (as such term is defined in section 101 of the Immi-
19 gration and Nationality Act (8 U.S.C. 1101), in the case
20 of a covered parent described in subsection (b), the Sec-
21 retary of Homeland Security shall—

22 (1) if the parent desires reunification, facilitate
23 the reunification in the United States of any depend-
24 ent child with the parent in a community-based set-
25 ting, at the expense of the Government, as expedi-

1 tiously as possible, but not later than 2 months after
2 the removal of the covered parent; and

3 (2) facilitate, at the expense of the Government,
4 the ability of the parent to make necessary arrange-
5 ments for their dependent child to remain in the
6 United States, including participation in any family
7 court or child welfare proceedings.

8 (b) COVERED PARENT DESCRIBED.—A covered par-
9 ent described in this subsection is a covered parent—

10 (1) who was removed from the United States;

11 (2) with respect to whom the Secretary did not
12 afford the protections required under this Act; and

13 (3) whose dependent child remained in the
14 United States after the parent's removal.

15 **SEC. 12. SAVINGS CLAUSE.**

16 Nothing in this Act may be construed to impede,
17 delay, or limit the obligations of the Secretary of Home-
18 land Security, the Attorney General, or the Secretary of
19 Health and Human Services under—

20 (1) section 235 of the William Wilberforce
21 Trafficking Victims Protection Reauthorization Act
22 of 2008 (8 U.S.C. 1232);

23 (2) section 462 of the Homeland Security Act
24 of 2002 (6 U.S.C. 279); or

1 (3) the stipulated settlement agreement filed in
2 the United States District Court for the Central
3 District of California on January 17, 1997 (CV 85–
4 10BUR26159 V3Y S.L.C.4544–RJK) (commonly
5 known as the “Flores Settlement Agreement”).

6 **SEC. 13. DEFINITIONS.**

7 In this Act:

8 (1) COVERED PARENT.—The term “covered
9 parent” means an alien who is a parent of a depend-
10 ent child, which child is physically present in the
11 United States.

12 (2) DEPENDENT CHILD.—The term “dependent
13 child” means an individual who—

14 (A) has not attained the age of 18; or

15 (B) is incapable of self-support because of
16 physical, medical, or mental disability.

17 (3) PARENT.—The term “parent” means—

18 (A) a biological or adoptive parent, or an
19 adult otherwise recognized by the law of a for-
20 eign country as a parent, whose parental rights
21 have not been relinquished or terminated under
22 State law or the law of a foreign country;

23 (B) a legal guardian of a child under State
24 law or the law of a foreign country; or

25 (C) a kin caregiver.