To limit the separation of families seeking asylum in the United States and expedite the asylum process for individuals arriving in the United States with children.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on ______

A BILL

To limit the separation of families seeking asylum in the United States and expedite the asylum process for individuals arriving in the United States with children.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protect Kids and Parents Act”.

SEC. 2. ENSURING FAMILIES REMAIN TOGETHER.

Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement:
(a) A child shall remain in the custody of and be detained in the same facility as the Asylum Applicant who is the child’s parent or legal guardian during the pendency of the Asylum Applicant’s asylum or withholding of removal proceedings.

(b) If a child has multiple parents or legal guardians who are Asylum Applicants, that child shall remain in the custody of and be detained in the same facility as all of the child’s parents and legal guardians during the pendency of the Asylum Applicants’ asylum or withholding of removal proceedings; unless one of the child’s parents or legal guardians is present in the United States and not in any form of detention, in which case the child shall be placed in the custody of that parent or legal guardian.

SEC. 3. FACILITIES FOR ASYLUM APPLICANTS WHO RETAIN CUSTODY OF A CHILD.

(a) The designated agencies shall maintain facilities for the joint detention of Asylum Applicants who retain custody of a child and the child. These facilities shall only contain individuals who are under the age of 18 or are the parents or legal guardians of individuals under the age of 18.

(b) FUNDING.—There are authorized to be appropriated for each of fiscal years 2019, 2020, and 2021 such sums as may be necessary to carry out this section.
SEC. 4. INCREASING THE NUMBER OF AUTHORIZED IMMIGRATION JUDGES.

(a) Increase in Immigration Judges.—The Attorney General of the United States shall increase the total number of immigration judges to adjudicate pending cases and efficiently process future cases by 375 judges.

(b) Necessary Support Staff for Immigration Judges.—To address the shortage of support staff for immigration judges, the Attorney General shall ensure that each immigration judge has sufficient support staff, adequate technological and security resources, and appropriate courtroom facilities.

(c) Increase in Board of Immigration Appeals Attorneys.—The Attorney General shall increase the number of Board of Immigration Appeals staff attorneys by sixty attorneys.

(d) Necessary Support Staff for Board of Immigration Appeals.—To address the shortage of support staff for the Board of Immigration appeals, the Attorney General shall ensure that the Board of Immigration Appeals and its staff attorneys has sufficient support staff and adequate technological and security resources.

(e) Prioritization of Asylum Applicants.—Any immigration judges, Board of Immigration Appeals staff attorneys, and support staff hired under the authority of
this section shall prioritize asylum applications that are filed by Asylum Applicants.

(f) FUNDING.—There are authorized to be appropriated for each of fiscal years 2019, 2020, and 2021 such sums as may be necessary to carry out this section.

SEC. 5. INCREASING THE NUMBER OF AVAILABLE DEPARTMENT OF HOMELAND SECURITY EMPLOYEES.

(a) INCREASE IN DEPARTMENT OF HOMELAND SECURITY PERSONNEL.—The Secretary of Homeland Security shall increase the total number of Department personnel to that are responsible for processing asylum applications filed by Asylum Applicants by 200 individuals. Positions authorized before the date of the enactment of this Act and any existing officer vacancies within the Department of Homeland Security on such date of enactment shall not count towards the increase mandated by this paragraph.

(b) INCREASE IN DEPARTMENT OF HOMELAND SECURITY PERSONNEL.—The Secretary is authorized to procure space, temporary facilities, and to hire the required administrative and legal support staff, on an expedited basis, to accommodate the additional positions authorized under this section.
(c) **FUNDING.**—There are authorized to be appropriated for each of fiscal years 2019, 2020, and 2021 such sums as may be necessary to carry out this section.

**SEC. 6. ESTABLISHING DEADLINES FOR PROCESSING OF ASYLUM APPLICANTS.**

Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement:

(a) **IN GENERAL.**—

(1) The Attorney General and Secretary of Homeland Security shall establish within 60 days of the enactment of this Act procedures for the expedited consideration of asylum applications filed by Asylum Applicants, pursuant to the guidelines set forth in this Act.

(2) An asylum application filed by Asylum Applicants must be governed by the expedited procedures set forth by this Act, as opposed to existing asylum law, procedures, regulations, and timelines. But unless modified by this Act or the procedures set forth in, regulations promulgated pursuant to, and timelines established by this Act, the standards, procedures, and burdens of proof established by existing law and regulations for asylum applications shall apply to an asylum application filed by an Asylum Applicant.
(3) Until the Attorney General and Secretary of Homeland Security have established procedures for expedited consideration of asylum applications under this section, any asylum application filed by an Asylum Applicant shall be reviewed under existing law, regulations, and procedures for the evaluation of an asylum claim. Other sections of this Act, including sections 2, 3, and 8, will nonetheless begin to apply to Asylum Applicants upon enactment of this Act.

(b) ASYLUM INTERVIEWS.—

(1) Within 24 hours of an initial referral from immigration officials of an asylum application by an Asylum Applicant, an asylum officer shall conduct an asylum interview of the Asylum Applicant.

(2) The Attorney General shall provide information concerning the asylum interview described in this section to Asylum Applicants at least twelve hours prior to the asylum interview. An Asylum Applicant may consult with a person or persons of the Asylum Applicant’s choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.
(3) Within 24 hours of the start of an asylum interview, the asylum officer must make a determination of whether the Asylum Application has a credible fear of persecution.

(4) If the officer determines that the Asylum Applicant has a credible fear of persecution, the Asylum Applicant shall be detained for further consideration of the application for asylum and referred for an asylum determination consistent with subsection (d).

(5) If the officer determines that the Asylum Applicant does not have a credible fear of persecution, the Asylum Applicant has 24 hours to request review by an Immigration Judge. If the Asylum Applicant does not request review of the determination within that time period, a Final Order of Removal shall be issued.

(i) The asylum officer shall prepare a written record of a determination that the Asylum Applicant does not have a credible fear of persecution. Such record shall include a summary of the material facts as stated by the Asylum Applicant, such additional facts (if any) relied upon by the offi-
cer, and the officer’s analysis of why, in
the light of such facts, the Asylum Appli-
cant has not established a credible fear of
persecution. A copy of the officer’s inter-
view notes shall be attached to the written
summary.

(c) Appearance Before Immigration Judge.—

(1) In the case of an Asylum Applicant referred
to an Immigration Judge following a determination
of credible fear of persecution by the asylum officer
or an Asylum Applicant who requests review by an
Immigration Judge of a determination that the Asy-
lum Applicant does not have a credible fear of perse-
cution, the Attorney General shall present the Asy-
lum Applicant before an immigration judge for a
hearing within 24 hours of the referral or request.

(2) The Immigration Judge shall make a deter-
mination of asylum or withholding of removal eligi-
bility within 120 hours of such a hearing.

(3) If the Immigration Judge determines the
Asylum Applicant is eligible for asylum or with-
holding of removal, the judge will order that asylum
or withholding of removal be granted.

(4) If the Immigration Judge determines that
the Asylum Applicant is not eligible for asylum or
withholding of removal, the Asylum Applicant has 24 hours to request review by the Board of Immigration Appeals. If the Asylum Applicant does not request review of the determination within that time period, a Final Order of Removal will be issued.

(i) The Immigration Judge shall prepare a written record of a determination that the Asylum Applicant is not eligible for asylum or withholding of removal. Such record shall include a summary of the material facts as stated by the Asylum Applicant, such additional facts (if any) relied upon by the Immigration Judge, and the Immigration Judge’s analysis of why, in the light of such facts, the Asylum Applicant has not established eligibility for asylum or withholding of removal.

(d) REVIEW BY BOARD OF IMMIGRATION APPEALS.—

(1) In the case of an Asylum Applicant who requests review by the Board of Immigration Appeals of a determination by an Immigration Judge that he or she is not eligible for asylum or withholding of removal, the Attorney General shall present the re-
quest for review to the Board of Immigration Ap-
peals within 24 hours of the request.

(2) The Board of Immigration Appeals shall
make a determination of asylum or withholding of
removal eligibility within 24 hours of receiving the
request.

(3) If the Board of Immigration Appeals deter-
mines the Asylum Applicant is eligible for asylum or
withholding of removal, the Board of Immigration
Appeals will order that asylum or withholding of re-
moval be granted.

(4) If the Board of Immigration Appeals deter-
mines that the Asylum Applicant is not eligible for
asylum or withholding of removal, the Asylum Appli-
cant has 24 hours to request review by the Attorney
General. If the Asylum Applicant does not request
review of the determination within that time period,
a Final Order of Removal will be issued.

(e) REVIEW BY ATTORNEY GENERAL.—

(1) In the case of an Asylum Applicant who re-
quests review by the Attorney General of a deter-
mination by the Board of Immigration Appeals that
he or she is not eligible for asylum or withholding
of removal, the Attorney General shall make a deter-
mination of asylum or withholding of removal eligibility within 24 hours of receiving the request.

(2) If the Attorney General determines the Asylum Applicant is eligible for asylum or withholding of removal, the Attorney General will order that asylum be granted.

(3) If the Attorney General determines that the Asylum Applicant is not eligible for asylum or withholding of removal, a Final Order of Removal will be issued.

(f) ISSUANCE OF FINAL ORDER OF REMOVAL.—Following a determination by the Attorney General that the Asylum Applicant is not eligible for asylum or withholding of removal, there shall be no additional review prior to the issuance of a Final Order of Removal.

(g) GRANT OF ASYLUM.—If asylum or withholding of removal is granted to an Asylum Applicant pursuant to these expedited procedures, the grant will be conditional and the Asylum Applicant shall remain in detention until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to, excludable from, removable from, or deportable from the United
States, or ineligible to apply for or be granted asylum or withholding of removal.

(h) Extensions of Deadlines on Behalf of Designated Agencies.—A designated agency may seek an extension of any of the deadlines set forth in this subsection by applying for an extension with an Immigration Judge. The Immigration Judge must issue an order stating that the designated agency has established that good cause warrants the granting of an extension. An extension may be granted for up to thirty days. Only two extensions may be granted, in total, to a designated agency during the entirety of an Asylum Applicant’s asylum application process. Any extensions of the deadlines shall not affect the detention of the Asylum Applicant.

(i) Extensions of Deadlines on Behalf of Asylum Applicants.—An Asylum Applicant may seek an extension of any of the deadlines set forth in this subsection by applying for an extension with an Immigration Judge. The Immigration Judge must issue an order stating that the Asylum Applicant has established that good cause warrants the granting of an extension. An extension may be granted for up to thirty days. Only two extensions may be granted, in total, to an Asylum Applicant during the entirety of the Asylum Applicant’s asylum application
process. Any extensions of the deadlines shall not affect
the detention of the Asylum Applicant.

SEC. 7. CONSEQUENCES OF DENIAL OF ASYLUM APPLICA-
TION.

Notwithstanding any other provision of law, judicial
determination, consent decree, or settlement agreement:

(a) Once a Final Order of Removal for an Asylum
Applicant is issued, the designated agency shall remove
from the United States within four days the Asylum Appli-
cant and any child for whom the Asylum Applicant is the
parent or legal guardian and has been detained with the
Asylum Applicant.

(1) EXCEPTION.—If the child has a parent or
legal guardian who will be remaining physically
present in the United States when the Asylum Ap-
plicant is removed, the child will remain in or be
placed in the custody of that parent or legal guard-
ian.

(b) An Asylum Applicant whose asylum application
is denied pursuant to the process outlined in this Act shall
not be prosecuted for illegal entry as a result of the entry
into the United States that led to the filing of the asylum
application adjudicated under the process outlined in this
Act, but will instead be removed from the United States.

An Asylum Applicant may be prosecuted for any other vio-
lation of the law if and once their asylum application has been denied. If the Asylum Applicant is prosecuted for an immigration crime that is not a crime of violence, the provisions of this Act that require that a child shall remain in the custody of and be detained in the same facility as the Asylum Applicant, and any other exceptions and requirements thereof set forth in this Act, shall continue to apply.

(e) A denial of an asylum application pursuant to the process outlined in this Act shall not prejudice a subsequent asylum application by the same Asylum Applicant on the same grounds if it is later filed after the Asylum Applicant arrives at a legal port of entry and files an asylum application, unless it is determined that the Asylum Applicant engaged in fraud during his prior asylum application that was denied pursuant to the process outlined in this Act.

SEC. 8. EXCEPTIONS TO ENSURING FAMILIES REMAIN TOGETHER.

(a) An agent or officer of a designated agency shall be permitted to remove a child from the custody of an Asylum Applicant that is the child’s parent or legal guardian with that Asylum Applicant’s consent. If a child has multiple parents or legal guardians in detention, all parents or legal guardians with custody of the child must con-
sent to have the child removed from their custody before
an agent or officer of a designated agency is permitted
to remove the child; otherwise, the child will remain with
the parent or legal guardian who does not wish for the
child to be removed.

(b) An agent or officer of a designated agency shall
be permitted to remove a child from the custody of an
Asylum Applicant without that Asylum Applicant’s con-
sent if the following has occurred:

(1) A State court, authorized under State law,
terminates the rights of a parent or legal guardian,
determines that it is in the best interests of the child
to be removed from his or her parent or legal guard-
ian, in accordance with the Adoption and Safe Fam-
ilies Act of 1997 (Public Law 105–89), or makes
any similar determination that is legally authorized
under State law.

(2) An official from the State or county child
welfare agency with expertise in child trauma and
development makes a best interests determination
that it is in the best interests of the child to be re-
moved from his or her parent or legal guardian be-
cause the child is in danger of abuse or neglect at
the hands of the parent or legal guardian, or is a
danger to herself or others.
(3) The Chief Patrol Agent or the Area Port Director, or their designees, authorizes separation upon the recommendation by an agent or officer, based on a finding that—

(A) the child is a victim of trafficking or is at significant risk of becoming a victim of trafficking;

(B) there is a strong likelihood that the adult is not the parent or legal guardian of the child; or

(C) the child is in danger of abuse or neglect at the hands of the parent or legal guardian, or is a danger to themselves or others.

(c) DOCUMENTATION REQUIRED.—The Secretary shall ensure that a separation under subsection (a)(3) is documented in writing and includes, at a minimum, the reason for such separation, together with the stated evidence for such separation.

SEC. 9. RECOMMENDATIONS FOR SEPARATIONS BY AGENTS OR OFFICERS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall develop training and guidance, with an emphasis on the best interests of the child, childhood trauma,
attachment, and child development, for use by the agents
and officers, in order to standardize the implementation
of section 8(b)(3).

(b) Annual Review.—Not less frequently than an-
ually, the Secretary of Health and Human Services shall
review the guidance developed under subsection (a) and
make recommendations to the Secretary to ensure such
guidance is in accordance with current evidence and best
practices in child welfare, child development, and child-
hood trauma.

(c) Requirement.—The guidance under subsection
(a) shall incorporate the presumptions described in section
10.

(d) Additional Requirements.—

(1) Evidence-based.—The guidance and
training developed under this section shall incor-
porate evidence-based practices.

(2) Training Required.—

(A) All agents and officers of designated
agencies, upon hire, and annually thereafter,
shall complete training on adherence to the
guidance under this section.

(B) All Chief Patrol Agents and Area Port
Directors, upon hire, and annually thereafter,
shall complete—
(i) training on adherence to the guidance under this section; and
(ii) 90 minutes of child welfare practice training that is evidence-based and trauma-informed.

SEC. 10. PRESUMPTIONS.

The presumptions described in this Act are the following:

(1) FAMILY UNITY.—There shall be a strong presumption in favor of family unity.

(2) SIBLINGS.—To the maximum extent practicable, the Secretary shall ensure that sibling groups remain intact.

SEC. 11. REQUIRED POLICY FOR LOCATING SEPARATED CHILDREN.

(a) IN GENERAL.—Not later than 180 days after the after the date of the enactment of this Act, the Secretary shall publish final public guidance that describes, with specificity, the manner in which an Asylum Applicant may locate a child they were the parent or legal guardian of that was separated from them prior to the enactment of this Act. In developing the public guidance, the Secretary shall consult with the Secretary of Health and Human Services.
(b) **WRITTEN NOTIFICATION.**—The Secretary shall provide each Asylum Applicant who was separated from a child they were the parent or legal guardian of with written notice of the public guidance to locate the separated child.

(c) **LANGUAGE ACCESS.**—All guidance shall be available in English and Spanish, and at the request of the Asylum Applicant, in the language or manner that is understandable by the Asylum Applicant.

**SEC. 12. ANNUAL REPORT ON FAMILY SEPARATION.**

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to the committees of jurisdiction that describes each instance in which a child was separated from a parent or legal guardian and includes, for each such instance, the following:

1. The relationship of the adult and the child.
2. The age and gender of the adult and child.
3. The length of separation.
4. Whether the adult was charged with a crime, and if the adult was charged with a crime, the type of crime.
5. Whether the adult made a claim for asylum, expressed a fear to return, or applied for other immigration relief.
(6) Whether the adult was prosecuted if charged with a crime and the associated outcome of such charges.

(7) The stated reason for, and evidence in support of, the separation.

(8) If the child was part of a sibling group at the time of separation, whether the sibling group has had physical contact and visitation.

(9) Whether the child was rendered an unaccompanied alien child.

(10) Other information in the Secretary’s discretion.

SEC. 13. CLARIFICATION OF PARENTAL RIGHTS.

If a child is separated from a parent or legal guardian, and a State court has not made a determination that the parental rights have been terminated, there is a presumption that—

(1) the parental rights remain intact; and

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

SEC. 14. CLARIFICATION OF EXISTING LAW.

(a) Nothing in this Act shall be interpreted to supersede or modify Federal child welfare law, where applicable,
including the Adoption and Safe Families Act of 1997 (Public Law 105–89).

(b) Nothing in this Act shall be interpreted to supersede or modify State child welfare laws where applicable.

(c) Nothing in this Act shall be interpreted to grant any due process rights to any individual who entered this country illegally.

(d) Nothing in this act shall alter how an unaccompanied alien under the age of eighteen is treated under existing law.

SEC. 15. GAO REPORT ON PROSECUTION OF ASYLUM SEEKERS.

(a) Study.—The Comptroller General of the United States shall conduct a study of the prosecution of asylum seekers during the period beginning on January 1, 2008 and ending on December 31, 2018, including—

(1) the total number of persons who claimed a fear of persecution, received a favorable credible fear determination, and were referred for prosecution;

(2) an overview and analysis of the metrics used by the Department of Homeland Security and the Department of Justice to track the number of asylum seekers referred for prosecution;

(3) the total number of asylum seekers referred for prosecution, a breakdown and description of the
criminal charges filed against asylum seekers during such period, and a breakdown and description of the convictions secured;

(4) the total number of asylum seekers who were separated from their children as a result of being referred for prosecution;

(5) a breakdown of the resources spent on prosecuting asylum seekers during such period, as well as any diversion of resources required to prosecute asylum seekers, and any costs imposed on States and localities;

(6) the total number of asylum seekers who were referred for prosecution and also went through immigration proceedings; and

(7) the total number of asylum seekers referred for prosecution who were deported before going through immigration proceedings.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report that describes the results of the study conducted pursuant to subsection (a).

SEC. 16. DEFINITIONS.

In this Act:
(1) AGENT; OFFICER.—The terms “agent” and “officer” include contractors of the Federal Government.

(2) ASYLUM APPLICANT.—The term “Asylum Applicant” means an alien who (a) has no permanent immigration status; (b) is detained by the United States government at or near a port of entry or within 100 miles of the border of the United States while having custody of and being in the presence of a child for whom the alien is a parent or legal guardian; and (c) seeks, within 48 hours of detention, asylum pursuant to section 208 of the Immigration and Nationality Act, withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act, or withholding of removal pursuant to the Convention Against Torture.

(3) ASYLUM APPLICATION.—The term “asylum application” means an application for asylum pursuant to section 208 of the Immigration and Nationality Act, an application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, and/or an application for withholding of removal pursuant to the Convention Against Torture.
(4) CHILD.—The term “child” means an individual who—

(A) has not reached the age of 18;

(B) has no permanent immigration status;

and

(C) was in the custody and presence of a parent or legal guardian when the parent or legal guardian was detained for illegally entering into the United States at or near a port of entry or within 100 miles of the border of the United States.

(5) COMMITTEES OF JURISDICTION.—The term “committees of jurisdiction” means—

(A) the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate; and

(B) the Committee on the Judiciary of the House of Representatives.

(6) DANGER OF ABUSE OR NEGLECT AT THE HANDS OF THE PARENT OR LEGAL GUARDIAN.—The term “danger of abuse or neglect at the hands of the parent or legal guardian” shall not mean migrating to or crossing the United States border.

(7) DESIGNATED AGENCY.—The term “designated agency” means—
(A) the Department of Homeland Security;

(B) the Department of Justice; and

(C) the Department of Health and Human Services.

(8) SECRETARY.—Unless otherwise specified, the term “Secretary” means the Secretary of Homeland Security.