



**Welcome the stranger.
Protect the refugee.**

**Statement submitted to the Committee on the Judiciary of the
U.S. House of Representatives**

Markup of H.R. 1147, “Legal Workforce Act”; H.R. 1149, the “Protection of Children Act of 2015; H.R. 1153, the “Asylum Reform and Border Protection Act of 2015”; and H.R. 1148, the “Michael Davis Jr. In Honor of State and Local Law Enforcement Act”

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Throughout our history, America has been defined by our generosity toward those who seek a safe haven from oppression. An asylum system that is fair, effective and humane honors both our country’s history and reflects the deeply-held American and Jewish tradition of offering a chance at a new beginning to those who seek safety and freedom. Once given that opportunity, refugees and asylees become active and productive members of American communities. **H.R. 1148, The Michael Davis, Jr. in Honor of State and Local Law Enforcement Act, H.R. 1153 the Asylum Reform and Border Protection Act of 2015, and H.R. 1149 the Protection of Children Act of 2015** are in direct conflict with these traditions. H.R. 1148 would make seeking asylum in the United States more difficult by expanding terrorism definitions and detention policies that are already too broad. The Protection of Children Act and the Asylum Reform and Border Protection Act would undermine laws designed to identify and prevent human trafficking as well as send children fleeing widespread gang violence back to countries where they face very real risks of physical and sexual violence.

H.R.1148- The Michael Davis, Jr. in Honor of State and Local Law Enforcement Act

H.R. 1148 unwisely delegates the enforcement of our national immigration laws to state and local law enforcement agencies despite demonstrated instances of profiling and subsequent weakening of community safety. Enforcement of immigration laws by local law enforcement increases distrust of the police by immigrant populations, which may negatively impact their willingness to seek assistance from the police. Enforcement of immigration law will also divert police attention and resources, making the community as a whole less safe.

Additionally, H.R. 1148 would negatively impact individuals fleeing persecution, including refugees, asylum seekers, and stateless people, by worsening expansive laws targeting terrorism that negatively impact law abiding asylees and refugees.

In 2001, Congress enacted legislation that significantly broadened the definition of “terrorist activity” and “terrorist group.” The law currently defines terrorist activity to include any amount and all types of support to terrorists even if the support is coerced. “Terrorist group” is so broadly defined that even resistance movements against brutal regimes are considered terrorist groups – even in cases where the resistance is supported by the U.S. These provisions are known as the “TRIG” or “material support provisions.” The TRIG provisions are so broad that activities that have no real life connection to terrorism are considered terrorist activities. Under current law, the survivors of the Warsaw Ghetto uprising or Iraqis that fought alongside Coalition forces against Saddam Hussein would be considered terrorists. The impact of these laws has already been felt by refugees with legitimate claims for asylum. Paying ransom to recover a kidnapped child or being forced to cook and clean by rebels that murdered family members have been considered terrorist activities.

Refugees that are found to have provided material support under the TRIG provisions are barred from entering the U.S. Additionally, refugees already living in the U.S. can be barred from obtaining green cards and being reunited with families. Congressional action changed the TRIG provisions to allow the President to create exemptions, however implementation of exemptions has been slow and thousands of refugees have been left in limbo.

Instead of addressing the flaws with the current system, the SAFE Act proposes to expand the current law. H.R. 1148 proposes to use TRIG provisions as a bar to a finding of good moral character and naturalization, which will prevent law-abiding refugees that have lived in the United States for years from naturalization. Until the flaws in the system are addressed provisions like this will compound harm to refugees and asylum seekers.

Furthermore, if passed, the H.R. 1148 would increase the unnecessary detention of immigrants—including refugees and asylum seekers—by eliminating the current prohibitions on indefinite detention. Many individuals in immigration detention in the U.S. are victims of persecution and torture in their home countries as are many families fleeing violence. The H.R. 1148 would do nothing to lessen the trauma experienced by survivors and in fact would cause more harm.

Section 312 of the H.R. 1148 creates new grounds for admissibility and deportation. Under the proposed language anyone that the government “knows or has reason to believe” is or was a criminal gang member or participated in activities of a criminal gang knowing or having reason to know that such activities would promote, further, aid or support the illegal activity of the gang would be inadmissible. Asylum, temporary protected status and special immigrant juvenile visas would be unavailable to anyone suspected of being a current member or former member of a criminal gang.

The language creating new grounds for inadmissibility for gang members is over-inclusive and vague. The bill does not require a criminal conviction in order to establish membership or association with a gang. The bill does not provide factors that must be considered in determining membership or

association nor does the bill provide any guidance on how to overcome a belief that a person is a member of a gang. Thus, guilt can be established through the perceptions of a government official and the fact of living the wrong neighborhood could potentially be enough to keep an otherwise eligible person out of the U.S.

Similar to the TRIG provisions, H.R. 1148 does not take into account actions that were the result of coercion or duress. People that are forced or coerced to participate in gang activity could be denied admission or deported. As a result, the new inadmissibility grounds will most likely require exemptions and waivers to ensure that otherwise eligible refugees and asylees are not denied status, a “solution” that has been difficult and slow to implement for the TRIG provisions.

The effect of this language would be felt immediately by those fleeing the Northern Triangle region, where forced conscription by gangs is a primary push factor. By virtue of being from the region, it could be “reasonably believed” that a person was a criminal gang member or participated in gang activity regardless of whether there was a criminal conviction. Additionally, victims of sex trafficking could be negatively impacted if they were forced to engage in commercial sex for the benefit of the gang. Security and safety is a vital part of any immigration policy. However, new legislation that includes overly broad inadmissibility grounds that fail to take into consideration the legal obligations of the U.S. to protect asylees and refugees should not be enacted.

H.R. 1149 Protection of Children Act of 2015 and H.R. 1153 the Asylum Reform and Border Protection Act of 2015

Fiscal year 2014 saw a spike in the number of unaccompanied children crossing the Southern border—over 68,000 unaccompanied children were apprehended by U.S. officials. The majority of these children came from the “Northern Triangle” of Central America, the countries of El Salvador, Guatemala, and Honduras. The violence in these countries has steadily increased as result of transnational gang activity. Honduras, for example, has the highest murder rate per capita in the world. Gangs forcibly recruit children and those that refuse are tortured and killed. The governments of El Salvador, Guatemala, and Honduras are unable to ensure citizen safety.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) ensures protection to unaccompanied children arriving to the U.S. from a noncontiguous country. The unaccompanied children provisions of the TVPRA were passed in recognition that screening at the border by Customs and Border Protection (CBP) was not a sufficient way to protect children from trafficking and exploitation. The TVPRA 2008 dictates that children from a noncontiguous country are placed in the care of Department of Health and Human Services (HHS) and are screened and prepared for removal proceedings. Children in the care of HHS receive medical and mental health treatment as well as access to education programs. Children are to be provided with legal counsel to the greatest extent possible. HHS also facilitates the placement of children with family members already living in the U.S. while the child’s case is considered during removal proceedings.

It is important to note that asylum claims are increasing all over the region. Mexico, Panama, Nicaragua, Costa Rica, and Belize have shown a 435 percent increase in the number of asylum applications they

have received from individuals in the Northern Triangle countries. It is push factors—rather than pull factors such as the perception that the U.S. is lax in enforcement of immigration laws—that are causing people to flee the Northern Triangle region.

The Protection of Children Act will increase the speed by which children are returned to their home countries., **Section 2 of the Protection of Children Act** eliminates the distinction between children from contiguous countries versus noncontiguous. The result would be that all children would be screened by CBP for trafficking and for fear of returning home, greatly increasing the responsibilities of CBP officers and decreasing their ability to actively patrol the border. This would require children to be interviewed almost immediately after arrival by CPB officers who may not receive the type of training necessary to effectively interview traumatized children. Children could be returned home within a few days without having had a meaningful opportunity to communicate the factors that would potentially allow them to stay in the country.

Section 10 of the Asylum Reform and Border Protection Act amends the TVPRA 2008 and increases the time that children are held in DHS custody. Instead of having to notify HHS within 48 hours of having an unaccompanied child, DHS would not have 7 days. Under the current law, DHS is required to transfer unaccompanied children to HHS within 72 hours, H.R. 1153 increases this time to 30 days. DHS is not the proper agency to provide care and services to children. This fact was established in the summer of 2014, when children were forced into overcrowded CBP holding centers with insufficient access to services.

Additionally, **Section 14 of the Asylum Reform and Border Protection Act** strips the prohibition against HHS placing children in secure facilities unless the child poses a danger to self or others. **Section 8** of the bill redefines what an unaccompanied child is, the effect of which will be increased authority for DHS to keep children in detention. This would undermine already established policies that recognize children should be treated differently from adults and should be held in the least restrictive setting possible. Detention of children causes unnecessary stress and trauma and must be avoided. Children should not be treated like criminals for seeking assistance.

The Protection of Children Act and the Border Protection Act will roll back the protections guaranteed to children and return the law to its pre-TVPRA state, which has been recognized as insufficient to protect children. While the spike in unaccompanied children from Central America and the use of smugglers to get them here is concerning, amending laws designed to protect all children from human trafficking and exploitation is a short sighted and ineffective overreaction. Smugglers will not change their behavior if children are denied assistance and protection, and children coming into the U.S. need protection. Now is the time to examine the factors that are causing them to flee, not to reduce assistance and return them as quickly as possible to the violence and poverty that compelled them to leave in the first place. Passing this bill would be incompatible with the American tradition of assistance to those seeking asylum.

In order to ensure that asylum seekers, particularly children, are not returned to persecution, HIAS recommends that Congress:

- Avoid the mistakes of the past, where overbroad definitions have led to the absurd result of persecuted individuals being denied protection based on conduct that has nothing to do with actual harmful behavior. “Anti-gang” efforts should not be modeled on the “anti-terrorism” legislation that has caused so much unnecessary hardship for so many bona fide refugees.
- Ensure that systems and funding are in place to ensure that migrants—particularly children—have competent legal representation and are not left alone to represent themselves in court.
- Allocate funds to the immigration courts to process cases quickly and should fund programs to help ensure the safe return and integration of children who are sent back to their home countries.
- Fund training for U.S. Border Patrol and other government officials to deal appropriately with children, including adequate screening to determine if they would be persecuted if returned to their home countries and advised of the right to seek asylum. All migrants—particularly children—who have asylum claims must be able to make them, and procedures for kids in the immigration system must be fair and humane.
- Encourage the use of alternatives to family detention, which is costly and inhumane. There is no reason the United States cannot control its borders while at the same time respecting the right of the persecuted to seek asylum and making the moral decision not to jail mothers and children who seek safety and a better life.
- Create a contingency fund for the Office of Refugee Resettlement (ORR) so that future unanticipated needs such as the increase in child migrants at the Southern border last summer are not paid for by the refugees from Iraq, Syria, Sudan, Ukraine, and elsewhere who have been generously offered protection by the U.S.

As a global humanitarian leader, the United States must act in a thoughtful and calculated manner thoroughly consistent with international refugee law and American principles of due process. HIAS looks forward to working with Congress to meet these goals and to improve our country’s broken immigration system in a way that keeps families together, provides proper care for children who are alone, and ensures that individuals who seek safety at our border are not returned to persecution.