

House Judiciary Committee

Markup of H.R. 1149: “The Protection of Children Act”

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By Lutheran Immigration and Refugee Service, Kids in Need of Defense
and the Women’s Refugee Commission

Lutheran Immigration and Refugee Service (LIRS)[1], Women’s Refugee Commission (WRC)[2], and Kids in Need of Defense (KIND)[3] appreciate the opportunity to submit our views for the markup of the Protection of Children Act (H.R. 1149). Our organizations have long advocated for the protection of unaccompanied children, refugees, asylum-seekers and trafficking victims, and as such we are deeply concerned that this bill will do nothing to increase protections for children as the title suggests; it instead makes children more vulnerable to traffickers, criminals, and the profound negative effects of prolonged detention. We believe there are simple ways to improve the efficiency of our immigration system that do not curb important protections or due process. We urge you to protect these vulnerable migrants instead of stripping away their protections. We look forward to working with Congress on legislation that will improve our immigration system while protecting migrant children and families.

The Protection of Children Act limits protections for children, places them in restrictive and inappropriate settings, and puts an almost impossible burden on children to establish a claim for relief from removal. The bill would also severely restrict the family reunification process and severely limit vulnerable children’s access to the protection they need through our asylum system.

Under this Act, when children are encountered by the Department of Homeland Security (DHS)’s Customs and Border Protection (CBP), they would be required to demonstrate that they are a victim of trafficking or have a fear of return to their home country. If the child, regardless of age, is unable to do so, the bill would require DHS to return the child to his or her home country. This would likely result in a high percentage of children who are traveling alone being returned to dangerous situations where they are being trafficked, persecuted, tortured, or killed. Children of a young age would automatically be removed because they would not be able to voice to DHS their concerns of trafficking and fear of return. For example,

- A young girl named Maria was kidnapped by a local gang and raped daily. She managed to escape and fled to the United States. Maria did not reveal what had happened to her until she was interviewed in the Department of Health and Human Services’ Office of Refugee Resettlement (ORR) custody by a social worker trained to interview children. If this Act were

law, CBP would not have learned that Maria was a trafficking victim and had a fear of return, and she would have been automatically returned.

- Jesus, a 3 year old boy, was sent by his family to the U.S. for his safety after his family had received threats of harm against Jesus. Jesus's family witnessed the torture and beheading of another toddler in their community by gangs as a punishment. Because the language in the TVPRA ensuring that a child is able to make an independent decision would be eliminated by this Act, and Jesus is of such a tender age, he would automatically be returned to his country.

This bill would also provide for extended CBP custody for children instead of transfer to a more appropriate facility within ORR. CBP short-term holding facilities are not designed to serve as detention facilities, and are especially inappropriate for children. It is unreasonable to ask CBP officials and agents to spend their time caring for children in their custody instead of focusing their limited resources on law enforcement activities.

Under this Act, if a child in CBP custody has successfully made a claim of trafficking or fear of return, he or she would only have 14 days to prepare a case for relief before going before an Immigration Judge. These accelerated removal proceedings would make it even more difficult for children to find an attorney or advocate who can help them articulate their claim for relief. Fair and just proceedings for children are further jeopardized by provisions watering down a child's right to counsel by only requiring HHS to ensure *access* to counsel, prohibiting the government from supporting attorneys representing these children, and, as discussed below, transferring initial jurisdiction for children's asylum claims back to the courts. These provisions not only have adverse consequences for children, but will prove disastrous to the immigration court system. The system is already backlogged and if judges are required to adjudicate more cases of unrepresented children, it will only further clog an overwhelmed system.[6] Without the proper support, legal representation, and access to information, relief would be nearly impossible to obtain, even with a strong trafficking or asylum claim. For example,

- 9 year old Rosa and 12 year old Juan came from the same village in Honduras. They reported that a gang running in their neighborhood was known to kidnap children, kill them, and sell their organs on the black market. The gang was also known to kidnap children, cut them open, put drugs in their bodies, sew them back up, and use the bodies as containers to traffic drugs. Both children reported their teachers in Honduras would warn the students about this gang and instructed children to interact with nobody during their walks to and from school. Both children reported they knew children from the neighborhood that had been kidnapped and never seen again. Without being transferred to ORR custody, these children may have never felt safe enough to reveal their stories and obtain legal services.

This Act provides for an extended period of time for the transfer and custody of children out of CBP custody. Thus, a child traveling alone would spend an increased amount of time in CBP custody, which has been found completely inappropriate for both adults and children. If this Act

passes, we would once again experience the troubling situation of children in CBP custody that we witnessed during the summer of 2014 when thousands of children spent weeks in overcrowded cement holding cells near the border with insufficient food, supplies, and health services.[5] In addition to longer periods in CBP custody, the Office of Refugee Resettlement would no longer be required to review a child's situation and safeguard against placement in an overly rigid facility.

Even if a child successfully navigates these significant hurdles by himself or herself and is transferred to ORR custody to await family reunification, this bill severely restricts their ability to be reunited with their family. Before a child is placed with their family, ORR would have to provide the family member's immigration status to DHS, who would then be forced to investigate and initiate removal proceedings against the family member if he or she lacked legal status. This punishes families seeking protection for their children and risks a parent's deportation while his or her child is going through the immigration court process. This could also incur further costs for the government as the child would remain in ORR custody or federally funded foster care if the family is too afraid to come forward for reunification. This provision would tear families apart even as they are trying to reunify under legal means. We strongly feel that family unity should be upheld wherever possible. Families are the building blocks of strong communities and as such parents should be allowed to provide care and protection to their children.

Additionally, the Act would hinder children's ability to seek protection. The Act would subject unaccompanied children to the one year asylum filing deadline, a bar to protection that has repeatedly been found to deny or delay protection to adults fleeing persecution subject to the bar. It would also force children to present their case in a trial before an Immigration Judge and ICE attorney instead of through an interview with an asylum officer. These provisions were specifically provided by the TVPRA 2008 because it has been extensively documented that children are often unable to explain their risk of persecution in a short amount of time and in an adversarial setting. Both of these measures not only impede due process for an already extremely vulnerable situation, but would further burden our overly-taxed immigration courts.

The Act would also divert foreign assistance to certain countries in order to prioritize repatriation over aid and development. Rather than addressing root causes in countries affected by this policy the Act would result in wastefully contributing to the cycle of migration.

We are particularly concerned with the sections of this bill that authorize detention for the duration of the child's asylum or trafficking proceeding. In addition to adding a layer of trauma to an already vulnerable population, it is difficult even for adult immigrants to obtain a lawyer while detained or to navigate the legal process from detention. It would be impossible for a child to navigate this system on his or her own without support from counsel. Our child welfare system has also long recognized the adverse impact of institutionalizing children.

Finally, changing the eligibility standard for abused children to gain protection through Special Immigrant Juvenile status would put many child victims back in harm's way. Many children currently eligible for this form of immigration relief have been saved from being sent back to an abusive parent in their home country by gaining protection through this visa. For children who suffered abuse at the hands of a parent in their home country, they can now live with a parent who will protect them and keep them safe, something we all want for all children. If the eligibility is changed, hundreds of children could be sent back to dangerous situations, forced to live on the streets or in abusive homes. For example,

- Sonia and Julia are sisters who were recently apprehended at the border. They fled their home country of Honduras after receiving death threats from an uncle. Sonia has a mental disability. Julia witnessed the sexual abuse of Sonia by a family member. Julia told her aunt about the sexual abuse. When the aunt asked her husband to leave the home, he became enraged and threatened to kill them all. Due to the lack of trust in the justice system, the aunt decided it was safest to take the girls far away. The next day, the aunt fled with the girls to the U.S. where their mother was living. The girls are currently in transitional foster care, working on reunification with their mother. They are also in the process of getting legal assessment regarding their potential relief for SIJS or asylum.
- Carlos, Javier, and Luis, along with their little sister Mariana, journeyed to the US from Honduras after being neglected and abused by their caregivers and receiving death threats from the local gangs. After the children's father died in a car accident in 2005, their mother left for the United States in order to provide for the children. During this separation, the children were left with caregivers who barely fed them and abused them both physically and emotionally, often taping their mouths shut during calls with their mother. Eventually, the children's mother decided to bring them to the US after a local gang threatened to kill them. The four children travelled to the United States and after apprehension at the border, were successfully reunited with their mother after 7 years of separation. At this time, the four siblings are all enrolled in school, started therapy to recover from past trauma, have pro-bono legal representation and have been identified as having legal relief (SIJS). They are making efforts to learn English, play soccer on a community team, and are slowly recovering from their experiences in Honduras.

If the one-parent SIJS provision were to become law, these children would not have been able to obtain this visa and could have instead been returned to the dangerous situations in their home countries.

Our organizations urge the United States government to fulfill its obligation to provide protection to children fleeing persecution in their homelands or who are victims of trafficking. This obligation is found in international treaties the United States has ratified, such as the United Nations Refugee Convention and the Convention against Torture, as well as in domestic immigration law. In

addition to legal obligations, our asylum and trafficking system reflects our nation's long and proud history of protecting and welcoming victims of persecution and torture. Rather than stripping protections and due process, we appeal to Congress to enact legislation that keeps families together, protects children, migrants, refugees and other vulnerable persons, and upholds the American value of justice for all.

The U.S. Congress has a unique and important role in the response to the increased number of children seeking protection in the United States. Specifically, Congress should be providing robust oversight to the agencies charged with the care and custody of unaccompanied children to make sure these children are housed in safe and appropriate facilities and conditions while they are in federal custody. The Prison Rape Elimination Act requires reporting on specific information about child detainees, as well as minimal levels of care and safety. Congress should be making sure that these requirements are met. In addition, Congress should be appropriating funds to, and monitoring the Justice Department to guarantee all immigration claims are fairly and timely adjudicated and these children are provided with pro bono or government funded counsel if they cannot afford counsel. Finally, Congress should ensure that children are safely and quickly released to their families while awaiting their immigration process.

This bill is not the solution to these needs. We must remain steadfast in our commitment to protecting vulnerable migrants and remember unaccompanied children are children first and foremost.

For more information:

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[1] Lutheran Immigration and Refugee Service (LIRS) is the national organization established by Lutheran churches in the United States to serve uprooted people. LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

[2] The Women's Refugee Commission's mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis. We research their needs, identify solutions and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice.

[3] Kids in Need of Defense (KIND) serves as a leading organization for the protection of unaccompanied children who enter the US immigration system alone and strives to ensure that no such child appears in immigration court without representation. We achieve fundamental fairness through high-quality legal representation and by advancing the child's best interests, safety, and well-being.