



March 5, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

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RE: ACLU Opposes H.R. 1149, the “Protection of Children Act of 2015”

Dear Chairman Goodlatte and Ranking Member Conyers:

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country.

On behalf of the ACLU, we write this letter to oppose H.R. 1149, the “Protection of Children Act of 2015,” which was voted out of the House Judiciary Committee yesterday. Instead of protecting children, H.R. 1149 would subject unaccompanied children to “voluntary” return procedures that undermine critical due process protections, weaken their right to legal counsel, and allow children to be detained for a longer period of time.

I. The Protection of Children Act (H.R. 1149) eviscerates critical due process protections for unaccompanied children fleeing brutal violence

Many unaccompanied children fleeing the Northern Triangle region of Central America have escaped sexual violence and gang-related violence. They arrive in the U.S. alone, often with only the clothes on their back. H.R. 1149 would gut crucial existing protections for unaccompanied children who have fled violence in their home countries and have legitimate claims for immigration relief. Among other problematic provisions, Section 2(a)(1) of H.R. 1149 would subject unaccompanied children who are apprehended by the Department of Homeland Security (“DHS”) to “voluntary” return procedures that would deprive them of numerous due process protections including the opportunity to present their claims to an immigration judge in a full hearing. While similar “voluntary” return procedures are currently in place for children from contiguous countries (Canada and Mexico), H.R. 1149 would apply those procedures to all unaccompanied children, regardless of their nationality.

The United Nations High Commissioner on Refugees has released reports criticizing the use of the existing voluntary return procedures on Mexican children, noting that they result in the deportation of numerous children who may have valid claims for immigration relief.¹ Broadening the scope of these “voluntary return” provisions would result in deporting even more children without due process.

Not only would H.R. 1149 expand the scope of these voluntary return procedures, but the bill would also make those already-weak procedures even less protective. Section 2(a)(2) of H.R. 1149 would eliminate the current requirement that DHS, before subjecting a child to “voluntary” return, ensure that the child has the capacity to make an independent decision to withdraw her application for admission, i.e. give up her chance to remain in the United States. The deletion of this provision would permit DHS to return children who, because of their youth or other capacity issues, have no comprehension of the consequences or magnitude of their decisions.

For those few children who manage to get past these “voluntary” return procedures, H.R. 1149 would prevent them from getting a fair hearing. Section 2(a)(5) of the bill would place children who are not voluntarily returned into accelerated removal proceedings by mandating that they appear for a hearing before an immigration judge within a mere 14 days after DHS screens them for return. Requiring children to appear for removal hearings so quickly would deprive them of any meaningful chance to obtain the legal representation necessary for their claims to be presented effectively.

Section 2(c)(5) of H.R. 1149 also seeks to weaken the right to counsel for unaccompanied children. H.R. 1149 would add language indicating that the Department of Health and Human Services (“DHHS”) has no obligation to provide legal representation to children at Government expense. The bill would only require the Department of Health and Human Services (“DHHS”) to ensure that children have “access to counsel.” The presence of immigration counsel has been shown greatly to increase children’s chances of gaining relief from deportation to dangerous conditions in their countries of origin.²

Finally, H.R. 1149 adds provisions designed to increase the length of time that children spend in immigration detention. Assuming that the child is not “voluntarily” returned, the law currently requires that DHS transfer children to the custody of DHHS within three days of determining that they are an unaccompanied child. H.R. 1149 would permit DHS to wait up to 30 days before transferring custody, thereby lengthening the time that such children remain detained in conditions that have been widely documented as inhumane.³

Children, by definition, lack the capacity to represent themselves in legal proceedings, much less in proceedings that could lead to their expulsion from the U.S. and deportation to a

¹ UNHCR Confidential Report, “FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012 - 2013 MISSIONS TO MONITOR THE PROTECTION SCREENING OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER” (July 2014), *available at* http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf.

² *See, e.g.,* Laura Meckler and Ana Campoy, “Children Fare Better in U.S. Immigrant Courts if They Have an Attorney.” *Wall Street Journal* (July 16, 2014), *available at* <http://www.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581>.

³ *See, e.g.,* ACLU et al. “Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention.” (June 11, 2014), <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>

country where they could face future harm and persecution. The overwhelming majority of children also lack the financial resources and know-how to find and retain their own attorneys. Without legal representation, unaccompanied children have to fend on their own to present complex asylum, human trafficking, and other immigration claims. The very notion of deporting children to life-threatening conditions without ensuring due process runs contrary to our constitutional history as well as our nation's commitment to protecting the most vulnerable among us.

II. Conclusion

This bill violates our country's commitment to ensuring due process and protecting human rights, and represent a significant step backward in our nation's efforts to reform our broken immigration system.

Please do not hesitate to contact Joanne Lin, Legislative Counsel (jlin@aclu.org; 202/675-2317), if we can be of assistance.

Sincerely,



Michael W. Macleod-Ball
Acting Director



Joanne Lin
Legislative Counsel

Cc: Members of the House Judiciary Committee