

House Judiciary Committee Markup

H.R. 1148: “The Michael Davis, Jr. In Honor of State and Local Law Enforcement Act “

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

H.R. 1152: “The Asylum Reform and Border Protection Act of 2015”

March 3-4, 2015

By The Young Center for Immigrant Children’s Rights

For more than 10 years, the Young Center for Immigrant Children’s Rights has advocated for a fair and just system for considering the claims of unaccompanied children who arrive in the United States—specifically, that every decision-maker consider each child’s best interests before rendering a decision. Our current immigration laws provide very limited, but important protections for children. Our laws do not prevent the deportation of children who fail to meet the legal criteria to remain here. Nor do they provide all of the basic protections that have been deemed necessary to ensure fair proceedings for children in our domestic courts. Proposed bills H.R. 1148, 1.R. 1149 and H.R. 1152 will undercut critical protections for these most vulnerable children, many of whom are fleeing irreparable harm. The bills put children at risk of being returned to trafficking, gang violence targeted specifically at them or their families, sexual and physical violence, and even death in their home countries. As detailed below:

- HR 1149 and 1152 would accelerate the process of deporting children (including toddlers, preschool aged children and teens) before they can tell their story, and without any assessment of the child’s best interests (Section 2).
- HR 1149 and 1152 would require children to establish claims of asylum in adversarial proceedings, rather than before asylum officers (who apply the same legal standards as immigration judges) without any guarantee of representation or child-friendly procedures (Section 4 and 9, respectively).
- HR 1149 and 1152 would require children—regardless of age, education or language ability—to know about and comply with an arbitrary one-year deadline for petitioning for asylum (Section 9).
- HR 1149 and 1152 would dramatically increase the time vulnerable children spend in adult or adult-like immigration detention (Sections 10, 14) and would preclude their release to family, a cost-effective measure that existed for more than a decade before the current spike in the numbers of unaccompanied children.
- HR 1149 and 1152 would force many children who can establish severe abuse or abandonment by a parent in home country to return to that parent (or to a situation of homelessness), putting them directly in harm’s way (Section 3).
- HR 1148’s vague and over-inclusive language would potentially relief for children who were forcibly conscripted into gangs.

The Young Center for Immigrant Children's Rights

Pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the Young Center has been appointed by the Department of Health and Human Services to serve as independent child advocate for hundreds of child trafficking victims and vulnerable unaccompanied children. The role of the Child Advocate is to advocate for the best interests of individual children. Through its policy work, the Young Center stands for the creation of a dedicated juvenile immigrant justice system that ensures the safety and well-being of every child.

H.R. 1149: "The Protection of Children Act" and H.R. 1152: "The Asylum Reform and Border Protection Act of 2015"

Unaccompanied immigrant children who have arrived in increasing numbers in the last few years are fleeing armed criminal violence often caused by gangs or drug cartels and horrific abuse at home.¹ These children are primarily fleeing from El Salvador, Guatemala, and Honduras, where murder rates mirror those of conflict zones. They are not coming just to the United States—other Central American countries have witnessed dramatic increases in children and adults seeking refuge.² Human rights violations in El Salvador, Guatemala and Honduras are compounded by the inability of the governments to protect their own citizens.³ Indeed, the United Nations High Commissioner for Refugees recently concluded that at least fifty-eight percent of unaccompanied children arriving from these countries were forcibly displaced and potentially in need of international protection.⁴ These children and adults are not journeying to the United States; they are fleeing their countries of origin.

As a result of the violence in the triangle countries, children often arrive with a history of trauma. Our experience at the Young Center has been that children who have experienced trauma, and who are separated from their parent or traditional caregiver, often do not open up immediately. They need time in an appropriate setting to talk about why they came to the United States. And just as in our domestic child welfare system, they need to be interviewed by individuals with expertise and training in child welfare and development.

In 2008, Congress overwhelming passed the William Wilberforce Trafficking Victims Protection Act (TVPRA), a law that recognizes that children are different, that child sensitive procedures provide a more accurate understanding of a child's eligibility for relief

¹ U.N. HIGH COMM'R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 32 (2014) [hereinafter CHILDREN ON THE RUN], http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf. See also WOMEN'S REFUGEE COMMISSION, FORCED FROM HOME: THE LOST BOYS AND GIRLS OF CENTRAL AMERICA 1 (2012) (noting that unaccompanied minors are subject not only to violent gang attacks, but also face targeting by police who mistakenly assume that they are gang-affiliated; additionally girls in particular "face gender-based violence, as rape becomes increasingly a tool of control.").

² *Id.* at 15. In combination, Mexico, Panama, Nicaragua, Costa Rica and Belize have documented a 432% increase in the number of asylum applications submitted by people from Honduras, Guatemala and El Salvador.

³ See U.S. CONFERENCE OF CATHOLIC BISHOPS, MISSION TO CENTRAL AMERICA: THE FLIGHT OF UNACCOMPANIED CHILDREN TO THE UNITED STATES 2 (2013), available at <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf> (concluding that increases of migration are attributed to "generalized violence at the state and local levels and a corresponding breakdown of the rule of law").

⁴ CHILDREN ON RUN, *supra* note 1, at 25.

from deportation than an expedited interview conducted at the border. Through the TVPRA Congress expressed its intent to ensure fair, measured consideration of children's claims before returning them to their countries of origins.

Pursuant to the TVPRA, unaccompanied minors from noncontiguous states are placed in removal proceedings, a long-standing immigration enforcement mechanism. Simultaneously, these children are transferred to facilities run by the Office of Refugee Resettlement where they are allowed to meet with social workers and attorneys experienced in working with children. In addition, and pursuant to the TVPRA, the Department of Health and Human Services (HHS) appoints independent child advocates, such as those at the Young Center, for particularly vulnerable unaccompanied children in the Rio Grande Valley, Chicago, Houston, New York/New Jersey and the Washington, D.C. area; their role is to meet with the children, learn their stories, and advocate for their best interests.

Section 2 of the Protection of Children Act eliminates the current distinction between the way in which unaccompanied children from contiguous and noncontiguous countries are processed and would include a presumption of immediate return of all these children to their home country. Speeding the process of deporting children without first giving them time to recover and tell their stories and without first assessing what, if anything they have to return to, will result in certain harm to some children. Existing laws already require that children from non-contiguous countries are placed in removal proceedings where they must appear before an immigration judge. They are not automatically eligible for any special visas—rather, just like adults, they must establish their eligibility for asylum or any other relief from removal.

These bills would not only eliminate child-appropriate protection for children from non-contiguous countries, but would cut back on the limited protections currently afforded children from contiguous countries. In those rare circumstances where a child is able to avoid expeditious return by convincing a Customs and Border Protection Officer that she is victim of severe trafficking or evinces a credible fear of persecution, **Section 2 of the Protection of Children Act** accelerates the limited time a child has to prepare a case for relief before an immigration judge – providing the child only 14 days to prepare the case. Accelerating removal proceedings will make it even more difficult for a child to find an attorney and prepare a case to defend against removal.

What's more, such an accelerated process may prevent a Child Advocate from being appointed, and will certainly limit the Child Advocate's ability to develop a best interest recommendation for the decision-maker. Independent Child Advocates are vital to protecting the best interests of the most vulnerable children, including the very youngest, pregnant and parenting teens, children at-risk of aging out, children with mental and physical disabilities, and children at-risk of long-term or permanent separation from their parents. The Young Center's Child Advocate model is designed to be low-cost: bilingual volunteers are trained and supervised by attorneys and social workers with experience in child protection and immigration law. Young Center Child Advocates are appointed to serve children while they are in custody and after they are released, ensuring their safety and well being throughout the immigration process.

Both Section 4 of the Protection of Children Act and Section 9 of the Asylum Reform and Border Protection Act take away the option for unaccompanied children to apply for protection through an interview with an asylum officer. The 2008 TVPRA provided that unaccompanied immigrant children applying for asylum, could first go through an interview with an asylum officer, which is a more child-appropriate procedure than defending against removal in an adversarial immigration court proceeding, though the child must meet the same legal criteria in either setting. Under the proposed bills, all children will be required to present their case in a trial before an Immigration Judge facing a Department of Homeland Security (DHS) attorney. It is well documented that children are often unable to explain their risk of persecution in a short amount of time and in an adversarial setting. The provisions of Section 4 of the Protection of Children Act, and Section 9 of the Asylum Reform and Border Protection Act not only impede due process for an already extremely vulnerable population, but would also create additional backlogs to an already overwhelmed immigration court system.

Section 9 of the Asylum Reform and Border Protection Act subjects unaccompanied children to the arbitrary one-year filing deadline. The flawed asylum-filing deadline has already led the United States to deny asylum to refugees with well-founded fear of persecution. To apply this legal technicality to children would subject the most vulnerable to an already arbitrary and harmful bar to protection.

Section 10 of the Asylum Reform and Border Protection Act extends the authorized time for children to remain in DHS custody. Instead of having to notify HHS within 48 hours of taking a child into custody, DHS would now have 72 hours, and instead of having only 72 hours to transfer the child to the care and custody of HHS, DHS would have 30 days. Thus, a child traveling alone would spend an increased amount of time in DHS custody, in conditions which have been found completely inappropriate for adults, much less children.

Section 14 of the Asylum Reform and Border Protection Act strips the prohibition against placing children in adult-like, rigid facilities unless the child poses a danger to self or others. Coupled with Section 8, which greatly modifies the definition of an unaccompanied minor, DHS will have increased authority to detain children for longer periods of time. These provisions severely undermine existing policies that recognize children should be treated differently from adults and should be held in the least restrictive setting as possible. Detention of children causes unnecessary stress and trauma, and is not in the best interests of any child unless detention is the only way to protect the child or the community from a specific danger.

Even if a child successfully navigates these significant hurdles and is transferred to HHS custody, **Section 14 of the Asylum Reform and Border Protection Act** severely restricts a child's ability to be reunited with family. The safe release of children to their families has been a policy for years, and long pre-dates the recent increase in arrivals. It is both a humane, and cost-effective measure. Under the proposed bills, before a child is placed with family, HHS is required to provide the family member's immigration status to DHS, who is then required to investigate and initiate removal proceedings against the family member if he or she lacked legal status. The Young Center strongly believes, in general, the family unit is both primarily responsible and best suited to provide for the needs and care of children.

Therefore, the separation of a child from a caretaker and the detention of children violate the principle of best interests and family unity.

Both Section 3 of the Protection of Children Act and Section 3 of the Asylum Reform and Border Protection Act change the eligibility standard for abused children to gain protection through Special Immigrant Juvenile status in that will result in many child victims being placed 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 criteria is changed, hundreds of children could be sent back to dangerous situations, forced to live on the streets or returned to abusive homes.

H.R. 1148: "The Michael Davis, Jr. In Honor of State and Local Law Enforcement Act "Section 312 of this bill creates new grounds for inadmissibility and deportation for individuals that the government "knows or has reason to believe" is (or was) a criminal gang member, or participated in gang activities. This provision is over-inclusive and vague. The bill does not provide any guidance on how to challenge or overcome an adjudicator's belief—which could be based on stereotypes or generalizations—that a child is a member of a gang. This bill would bar children merely suspected of being former or current gang members from receiving asylum, temporary protected status or special immigrant juvenile visas.

Sixty-three percent of children fleeing El Salvador report gang violence as the primary reason for leaving.⁵ Yet this bill would prevent children who have been forcibly recruited into gangs, a common practice in Central American countries, from receiving protection in the United States. This provision does not take into account that some children are forced to join gangs through threats not only to their own lives, but also to their families— younger brothers, mothers, sisters. For more than a century, American judges in juvenile courts have balanced the need to ensure safe communities with the rights of children to grow, to develop and to learn, and to have individualized assessments of culpability through fundamentally fair procedures. We can, and should, ensure that our immigration laws strike a similar balance.

The Young Center looks forward to working with Congress to take steps to strengthen protection for unaccompanied children and advance policies that will promote consideration of their best interests.

⁵ CHILDREN ON RUN, *supra* note 1, at 32.