

**Statement for Hearing  
on  
“Interior Immigration Enforcement Legislation”  
  
House Judiciary Committee  
Subcommittee on Immigration and Border Security**

**February 11, 2015**

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

Lutheran Immigration and Refugee Service (LIRS)<sup>1</sup>, Women’s Refugee Commission (WRC)<sup>2</sup>, and Kids in Need of Defense (KIND)<sup>3</sup> appreciate the opportunity to submit our views for this hearing. Our organizations have long advocated for the protection of unaccompanied children, refugees, asylum-seekers and trafficking victims, and as such we are deeply concerned with these bills that would unduly inflict harm upon families and unaccompanied children fleeing violence by expanding immigration detention, limiting access to due process, and reducing the effectiveness and accessibility of our asylum and trafficking protection systems. **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 Asylum Reform and Border Protection Act (H.R. 5137)**

Our organizations oppose the Asylum Reform and Border Protection Act as it would rollback critical protections for children under the Trafficking Victims Protection Reauthorization Act (TVPRA), expand the inappropriate use of immigration detention for children, limit access to both due process and the asylum process, and create unsafe conditions for repatriation and custody of children.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

Our organizations' work with migrant children traveling alone has shown that children crossing the border are often fleeing dangerous and life threatening circumstances in order to seek refuge in the United States.<sup>4</sup> As evidenced by the increase in children migrating since 2011, the situation in Central America is dire and only getting worse. These children are escaping gang violence, sexual and gender-based violence, forced recruitment, domestic violence, abandonment, and are often victims of trafficking. Children fleeing for their lives will not be deterred by punitive legislation designed to persuade them not to come to the U.S. by eroding important human rights protections.

This Act eliminates protections vouchsafed by the TVPRA in a number of ways. The bill limits the definition of an unaccompanied child, effectively restricting eligibility for trafficking and asylum protections to a very few. The bill also erodes due process for children as it allows Customs and Border Protection (CBP) to place children traveling alone in expedited removal proceedings. The accelerated nature of these proceedings means that they will have no chance of legal representation when there are experienced attorneys across the U.S. who are willing and able to represent children in these cases. This means unaccompanied children, no matter their age - even babies and toddlers, would somehow be forced to make a case on their own while in a CBP holding cell. This thoroughly undermines any due process protections for children and erodes the purpose of the TVPRA—to ensure children are not returned to danger.

With regard to the asylum process, this Act creates a more complicated and adversarial process to obtain protection. The Act creates a higher standard for proving a threshold fear of persecution, applies the one-year asylum bar to children, applies Safe Third Country requirements to children, and forces children to present their case in a trial before an Immigration Judge and ICE attorney instead of through an interview with an asylum officer, further burdening our overly-taxed immigration courts. These changes to the system are not necessary to avoid abuse of our asylum system and expose children to dangerous removals, even to third countries that the child does not reside in or have any ties to. The current system contains numerous fraud prevention and detection mechanisms including fraud detection training for asylum adjudicators, enhanced background biographical and biometric checks with federal agencies, additional fraud detection and investigation capacities, and stepped up referral of cases for criminal prosecution.

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.

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<sup>4</sup> *Forced From Home: The Lost Boys and Girls of Central America*, Women's Refugee Commission 2012

Not only would this Act extensively limit access to asylum and trafficking protections, it would virtually eliminate access to U visas for unaccompanied child victims of crimes in the United States and for Special Immigrant Juvenile Status, a two decades-old form of humanitarian protection for abused, abandoned, and neglected children. For example:

- **An eleven-year old girl named Jocelyn** was being sexually abused by her stepfather and her mother refused to protect her favoring her relationship with her husband over protection of her daughter. Through a family member, Jocelyn was able to locate her father in the U.S. and fled for protection. If, this Act were law, CBP would be the gatekeeper of determining whether Jocelyn suffered sexual abuse and without allowing access to Special Immigrant Juvenile Status, Jocelyn would have been automatically returned to her abuser.
- A **fourteen-year old girl named Lucia** was lured into the U.S. with false promises of working on a farm in the southern U.S. and after she was brought across the border, she was held in a house and raped repeatedly by unknown men. The house was raided and she was sent to an Office of Refugee Resettlement therapeutic home for girls where she was able to talk about the rapes and care for the child that she conceived as a result of the rapes. If this Act were law, CBP would have sole authority to determine whether Lucia was a victim of a crime or trafficking in the U.S., and without access to trauma support and pre-natal care, Lucia would have been automatically returned to her traffickers who would continue to operate with impunity in the U.S.

Finally, 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.<sup>5</sup> 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.

### **The Protection of Children Act (H.R. 5143)**

Our organizations also oppose the Protection of Children Act that includes many punitive provisions similar to the Asylum Reform and Border Protection Act. 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. 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

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<sup>5</sup> *The Guardian*, "US Border Patrol struggles to shelter thousands of unaccompanied children", June 18, 2014. Available at: <http://www.theguardian.com/world/2014/jun/18/us-border-patrol-children-detained-texas-arizona>.

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 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 their age, is unable to do so, the bill would require DHS to return them to their 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 may 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 ORR custody by a social worker trained to interview children. If this Act were law, CBP would be required to determine whether 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 regarding 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 make a case for relief before going before an Immigration Judge. These accelerated removal proceedings would make it even more difficult for a child to find an attorney or advocate who can help them articulate their claim for relief. This would be exacerbated by the provision watering down the child's right to counsel by only requiring HHS ensure access to counsel and prohibiting the government from supporting attorneys representing these children and transferring initial jurisdiction for children's asylum claims back to the courts. This not only has adverse consequences for the children, but it 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.<sup>6</sup> Without the

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<sup>6</sup> [http://trac.syr.edu/phptools/immigration/court\\_backlog/apprep\\_backlog.php](http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php)

proper support, legal representation, and access to information, relief would be nearly impossible to obtain, even with a strong trafficking or asylum claim.

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.

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.

### **The Strengthen and Fortify Enforcement (SAFE) Act (H.R. 2278)**

Our organizations oppose the SAFE Act that would expand the use of immigration detention, encourage state and local law enforcement officials' participation in immigration enforcement, and decrease access to justice, protections, and critical immigration safeguards for vulnerable migrants. This bill would also make it a crime punishable by prison time for individuals or houses of worship to provide humanitarian aid and assistance to persons lacking immigration status.

Through our organizations' work with asylum seekers, torture survivors, unaccompanied children and migrant families, we have witnessed firsthand the detrimental effects immigration enforcement measures, such as immigration detention, have on individuals, families, and communities. In Fiscal Year 2013, Immigration and Customs Enforcement (ICE) detained 441,000 persons and in Fiscal Year 2014, it removed 315,943 individuals from the United States. The number of impacted individuals is even greater when expanded to include the communities and families left behind.

The SAFE Act mandates even greater use of immigration detention and explicitly allows indefinite detention of migrants — including asylum seekers and victims of torture. This is the wrong approach. In a country that honors due process, and during a time of reduced federal spending, our overreliance on detention as an immigration enforcement approach should be replaced with a broad continuum of alternatives to detention with an emphasis on community-based alternatives that provide a holistic and fiscally-responsible approach to ensuring compliance with appearance at immigration proceedings.

Similarly, the SAFE Act would allow state and local law enforcement officials to act as immigration agents. For example, the bill expands the 287(g) program, a flawed enforcement approach that weakens relationships between migrant communities and local law enforcement. In December 2012, ICE announced that 287(g) would only be continued in jurisdictions operating the program out of their jails, terminating those programs operating amidst communities, also known as the “task force” model. Unfortunately, the SAFE Act would reverse this decision, further eroding trust between migrants and local law enforcement and decreasing safety for entire communities.

Other provisions of the SAFE Act would limit immigration options for certain migrants, including formerly incarcerated individuals who have paid their debt to society and are rebuilding their lives. Provisions that expand mandatory detention and allow for indefinite detention do not serve justice, and run counter to the fundamental American value of liberty and justice for all.

Our organizations urge the United States government to fulfill its obligation to provide protection to individuals 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. Our asylum system provides refuge to men, women, and children who have endured unimaginable persecution in their countries of origin on account of their race, religion, political opinion, membership in a particular social group, or nationality. In addition to legal obligations, our asylum 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.

The bills that are the subject of today's hearing are 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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