

Statement
on
The Protection of Children Act of 2017, H.R. 495
House Judiciary Committee

June 21, 2017

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 about this legislation. 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 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.

Our organizations oppose the Protection of Children Act, which includes many punitive provisions that do nothing to increase protections for children as the title suggests, but instead, make 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 bill would also severely restrict the family reunification process and undermine vulnerable children's access to the protection they need through our asylum system.

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.

This Act would treat all unaccompanied children similar to children from contiguous countries by providing them with only a cursory screening process. Both the U.S. Government Accountability Office (GAO) and the United Nations High Commissioner for Refugees (UNHCR) have found that, notwithstanding provisions in law that require otherwise, current Department of Homeland Security (DHS)/Customs and Border Protection (CBP) practices fail to protect unaccompanied children (UC) from Mexico who are encountered at the U.S. border. The GAO found that, from FY 2009-2014, 95% of Mexican UC were returned to Mexico, despite frequent indicators of trafficking or fear of return.⁴ The GAO report also found that CBP often did not correctly apply trafficking indicators, did not routinely ask follow-up questions to rule out all trafficking concerns, and did not ask questions pertaining to the risk of trafficking upon return to Mexico. It further cited a UNHCR finding that more than half of CBP officials interviewed in 2012 and 2013 did not believe it was their job to assess a child's fear of returning home.⁵ GAO disclosed that CBP officers indicated an "inconsistent understanding" of what a credible fear of persecution entails and how to conduct a screening for such fear⁶ and expressed clearly erroneous views of applicable law.⁷ In addition, the report found that in 13 of 15 facilities, CBP agents completed Form 93, the "Unaccompanied Alien Child Screening Addendum," for Mexican unaccompanied children in an open area computer terminal—requiring children to reveal traumatizing or sensitive details in an uninviting public space, potentially in the presence of their trafficker, and thus greatly reducing their likelihood of doing so.

The following story illustrates the importance of transferring children to the Office of Refugee Resettlement (ORR) so they can be adequately screened by social workers, legal service providers, and child advocates:

- **Rosa**⁸ is a 17 year old girl from Honduras who grew up with her brother David, her older sister, and two cousins. When Rosa was only 5 years old, her father was murdered and her mother abandoned her and David shortly after. Rosa fled her home country in the summer of 2016 after watching gang members kill her 16 year old brother **David** right in front of her. Rosa shared with her LIRS case worker that David had fled previously to the United States to escape gang violence, and upon apprehension at the border, he signed papers for voluntary departure and was sent back to Honduras. He was killed 22 days after he arrived back in Honduras.

Rosa's account of what happened to her brother illustrates the insufficiency of cursory screening procedures to protect children and underscores the need for individuals with child welfare expertise to assess the protection needs of children who arrive at the border. Thankfully, in Rosa's case she was transferred to an ORR foster care placement and is receiving the legal services she needs to make her case for relief.

⁴ GAO Report, *Id.* at 24.

⁵ *Id.* at 29, *citing* UNHCR, Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.- Mexico Border (Washington, D.C.: June 2014).

⁶ *Id.* at 27-28.

⁷ *Id.* at 29 (discussing CBP officers' statements, during interviews with UNHCR officials, that "definition of fear is that it must be fear of persecution or harm inflicted directly by the government").

⁸ All names have been changed to protect the children.

Under this Act, a child, regardless of their age, must somehow disclose the reason he or she was brought to the United States. If the child 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 without a parent being returned to dangerous situations where they are being trafficked, persecuted, tortured, or killed. It is common for children to not fully be able to articulate or even identify their fears or the reasons they have fled to the United States. This requirement could result in children being automatically removed because they may not be able to voice to DHS their concerns of trafficking and fear of return.

For example,

- **Sara** is a 4 year old girl from Guatemala who suffered extensive sexual and physical abuse by her father. Sara's mother was living in the U.S. as a legal resident when she heard about the abuse. She fled to Guatemala and contacted authorities to help her remove Sara from her father's home. Although she was successful in removing her daughter from this situation, the father was not incarcerated for his actions. He began threatening to kill Sara, as well as intimidating and threatening family members to learn Sara's location. Sara's mother had to return to the U.S., but had no known legal recourse in which to bring Sara with her. Sara's mother made the difficult decision to send her daughter on the frightening journey to the U.S. with a guide in order for them to live safely together.

Sara is currently in LIRS transitional foster care, working on reunification with her mother. She is also in the process of getting a legal assessment regarding her potential eligibility for SIJS or asylum.

- **Lara**, a 6 year old Guatemalan girl, fled with her father in 2016 to the United States. Once at the border, Lara was separated from her father and was placed in ORR foster care with LIRS. Little was known about why Lara had fled until her LIRS case manager was able to locate her father and ascertain why they left. Lara's father revealed that they were forced to leave after an unknown group of individuals burned down their house and threatened to kill both Lara and her father. Young children like Lara often are unable to express the reason for their flight. While adults traveling with young children often have such details, this information is often never captured or revealed while in CBP custody.

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 they 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 to ensure access to counsel, prohibiting the government from supporting either the attorneys representing these children or from facilitating pro bono representation, and transferring initial jurisdiction for children's asylum claims back to the courts. These changes are not merely formalistic, but instead, pose significant consequences for the rights and well-being of children in our nation's immigration system. Unaccompanied children face unique vulnerabilities in an adversarial legal setting: beyond lacking knowledge of U.S. immigration law, these children – some as young as three or four years old – also confront experienced government attorneys, language barriers, and unfamiliar and intimidating procedures as they navigate an incredibly complex legal process. It is nearly impossible for a child to represent themselves successfully without the assistance of counsel. These circumstances are especially overwhelming for child survivors of trauma and violence, who are often unable to share their painful stories just after arriving in the United States. 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. The bill would also compound existing administrative backlogs by requiring judges to try to adjudicate an increased number of cases of unrepresented children, further clogging an overburdened system.⁹

The following case examples illustrate the difficulty children face in disclosing their past trauma, the time needed to develop trust, and the necessity of non-adversarial settings:

- **Marta**, age 16, and, **Marisela**, age 3, are a mother and daughter from Guatemala. Marta lived with her parents until the age of 11, when her mother died from cervical cancer. Marta continued to live with her father, who had been physically and sexually abusing her since she was 7 years old. When Marta was 12, her father's abuse resulted in Marta's pregnancy with her daughter, Marisela. After learning Marta was pregnant, her brother forced her not to report their father's abuse. Then her father kicked her out of the family home. After years of living with various relatives and not finding stable care or protection, Marta and her child eventually fled to the U.S. Marta was highly traumatized by the years of abuse and had difficulty telling her story. Fortunately, she was able to file an affirmative application for asylum and avoid the adversarial process in immigration court. She and her daughter (a derivative applicant) were granted asylum in May 2017, only 6 months after she first met her KIND pro bono attorney.
- **Isai** is a 17-year-old boy from El Salvador. He arrived in the U.S. in 2016 after fleeing gang violence in his community. Isai was targeted because of a disability that he has endured since birth—a physical deformity. Both of Isai's ears are covered with extra skin that blocks the openings, and he has a hearing disability because he is missing canals in both ears. He suffered a long period of social isolation and was repeatedly bullied at school and by neighbors. Although he has received corrective surgery in the U.S. and is now able to hear better, he continues to experience a communication gap caused by over a decade of living without hearing properly and communicating with others.

⁹ http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php

Isai is currently represented by a KIND attorney. The ability to present his case at the Asylum Office in a non-adversarial setting will be important to Isai for many reasons. He is emotionally young, and he has difficulty understanding the import of what might appear to be basic questions. He is unable to pinpoint time frames and dates because he spent many years in isolation, at home without an adult, where one day folded into the next without distinction. It is very difficult to draw him out and to get him to talk in depth about himself and his experiences. He tends instead to shut down and to quickly resort to old insecurities about his inability to understand. He will benefit from an asylum official trained in child sensitive questioning techniques and in creating an environment designed to put the child at ease so that more information is forthcoming. Were this child made to appear in open court on the witness stand, subject to cross-examination and scrutiny from opposing counsel, it is possible that he would not be able to answer the majority of questions put to him. He embodies the very essence of why children should be treated differently than adults when they are in removal proceedings alone.

Even if a child successfully navigates the immigration court process alone 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, which 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. In addition, with more family members too afraid to come forward to reunite with a child, ORR's capacity could become quickly overburdened and the agency even further financially stretched, as the child would remain in ORR custody or federally funded foster care much longer than under current practices. This provision would tear families apart even as they are trying to reunify under legal means. We strongly feel that family unity, a fundamental principle in international human rights law, should be upheld wherever possible. Families are the building blocks of strong communities; as such, parents should be allowed to provide care and protection to their children, and children should have the opportunity to be raised in a family setting with their parents whenever in their best interests.

Finally, changing the eligibility standard for abused children to gain protection through Special Immigrant Juvenile status (SIJ) 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. This bill alters existing law to require children to demonstrate that they are unable to reunify with *either* of their parents before becoming eligible for SIJ status. By narrowing eligibility for this critical protection, Congress risks the very outcome it sought to prevent through the TVPRA: the repatriation of children “into the hands of traffickers or abusive families.” (H.R. Rep. No. 101-430 (2007). Without

access to one-parent SIJ, hundreds of children could be sent back to dangerous situations, forced to live on the streets or in abusive homes, or in other circumstances that sacrifice their best interests.

The following case examples illustrate the importance of the SIJ provision as it stands:

- **Rosa, Alicia, and Isabel** are three young sisters who were raised by their mother in Mexico. One day their mother was murdered; their father was suspected of killing her but ultimately was acquitted of the crime. The three girls went to live with their maternal grandmother, who physically and emotionally abused the girls, blaming them for their father's past domestic violence against their mother. All three girls were sexually abused by various uncles in the home. The father later came and took the girls away, leaving them unattended in Tijuana with other laborers while he worked. The father tried to bring the girls to the U.S., but was ultimately deported without them, since the girls were able to disclose the abuse and identify a fear of being returned back in his care, rendering the girls as unaccompanied children. The girls were taken in by a family, who eventually petitioned the court to be their guardians. The father had initially agreed to the dependency, but ultimately declined and has grown progressively more aggressive. The father tried to use the request for guardianship as leverage to get money from the family. With the help of a KIND attorney, the family was able to get the state court to issue findings as a result of the mother's death due to the one-parent provision. Now, the girls have access to special immigrant juvenile status (SIJS) without having to wait for service on the father, who is abusing the process to get money. It is a major protection to the girls to get stability through one-parent SIJS.
- **Esteban** (15-years-old) and **Edgar** (17-years-old) are siblings who fled Honduras after their abusive father forced them to help his gang of petty criminals. When Esteban and Edgar were toddlers, their mother left for the U.S. in search of work. She left the brothers in the care of their father, who spent the money she sent the kids on alcohol. The father didn't let the brothers go to school, but instead forced them to be police lookouts for the criminal organization he was in—they forced them to steal and give him all the money. If the brothers refused to help him, he would beat them. Both brothers have scars all over their bodies from their father's abuse. Esteban and Edgar escaped their abusive father about 5 years ago and went to live with their maternal grandmother. But their father continued to pursue them so frequently that Edgar fled to the U.S. in 2015. Too young to make the journey, Esteban stayed in Honduras. Then, in 2016, their father tried to kidnap him from school; this is when he decided it was time to flee to the U.S. as well. Both boys are currently living safely with their mother and applying for SIJS protection with the help of their KIND attorney.

Our organizations urge the U.S. government to fulfill its obligation to provide protection to children fleeing persecution in their homelands and victims of trafficking. Rather than stripping protections

and due process, we appeal to Congress to enact legislation that protects children, migrants, 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 provide 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 ensure that these requirements are met. In addition, Congress should appropriate funds to and monitor the Justice Department to guarantee that all immigration claims are fairly and timely adjudicated and that children are provided with pro bono or government funded counsel if they cannot afford counsel. Congress should ensure that children are safely and quickly released to their families while awaiting their immigration process. Finally, Congress should ensure funds are appropriated to the ORR to enable all children to have access to post-release services, specifically legal services and case management, which ensure the child's safety, the family's compliance with legal obligations, and efficient adjudication of child's claims.

This bill is not a solution to these needs and instead eradicates critical protections and support for child survivors of trafficking. We must remain steadfast in our commitment to protecting vulnerable migrants and remember that unaccompanied children are *children* first and foremost.

For more information:

Jessica Jones, Policy Counsel, Lutheran Immigration and Refugee Service (LIRS), jjones@lirs.org. More information can be found at: <http://lirs.org/our-work/people-we-serve/children/advocating-for-children/>

Jennifer Podkul, Director of Policy, Kids in Need of Defense, jpodkul@supportkind.org. More information can be found at: <http://www.supportkind.org>.

Leah Chavla, Program Officer, Migrant Rights and Justice Program, Women's Refugee Commission, leahc@wrcommission.org. More information can be found at: <https://www.womensrefugeecommission.org/rights>