



WHAT ARE THE TVPRA PROCEDURAL PROTECTIONS FOR UNACCOMPANIED CHILDREN?

Are They “Loopholes” to Compliance with Our Immigration Enforcement System?

In response to the arrival of increasing numbers of unaccompanied children and families at the U.S. southern border in recent months, the Trump Administration last week requested that Congress enact immediate changes to the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to allow the government to quickly return unaccompanied children to their countries of origin in an effort to deter children from coming to the United States.

Repeatedly mischaracterized by the Administration as “loopholes” the TVPRA’s protections are in reality the product of deliberate, bipartisan action recognizing the vulnerability of children traveling alone to human trafficking and other forms of exploitation. The Act’s provisions—described below—create basic procedures to ensure the appropriate treatment of children in the immigration system and to enhance the ability of our legal system to sort through the cases of children defending themselves against removal in an orderly and efficient manner.

Contrary to the Administration’s assertions, changes to the TVPRA will do nothing to stop children from fleeing El Salvador, Guatemala, and Honduras—countries in which grave violence by gangs and narco-traffickers threatens the lives and safety of children and youth in particular, and makes daily activities such as going to school an extreme risk. While these conditions remain unresolved, children will have no choice but to flee in search of protection.

No legislative change will keep these children from trying to save their own lives. Instead, such changes risk the immediate return of children to life-threatening dangers that they will be forced to flee once more. Rather than preventing children from undertaking harrowing journeys to the U.S., the proposed changes will cruelly require that they make these journeys—and risk exploitation and harm—repeatedly in a desperate search for protection.

Weakening the TVPRA’s protections will not address the current border management crisis. Altering the ways in which children’s cases are processed and the protections available to them will not eliminate the government’s responsibility to provide humanitarian protection to those in need, to arrange safe transport and care of the children it encounters, or to ensure appropriate conditions and capacity within its short-term holding facilities. These challenges demand that the Administration modernize border strategy to respond to the reality of the current flow.

The following procedures must remain intact to ensure children have a full and fair opportunity to make their legal cases and that our country never returns a child to harm:

1. Detention

The TVPRA reaffirms the transfer of responsibility for the care and custody of unaccompanied children to the Department of Health and Human Services (HHS), as provided for by the Homeland Security Act of 2002. It also creates release procedures that ensure children are not vulnerable to trafficking after reunification.

2. Asylum

Recognizing that children are frequently transferred between various detention facilities during their first year in the U.S. and that filing paperwork is impracticable without a permanent location, the TVPRA eliminates the one-year asylum filing deadline for unaccompanied children. The law also recognizes that, because children are not provided legal counsel in removal proceedings, the use of adversarial proceedings would pose a drain on resources and clog an already overwhelmed system. Accordingly, unaccompanied children have the opportunity to have their cases heard before USCIS in an interview process that is more appropriate for children and that is conducted by Asylum Officers who have received training on child interviewing and the adjudication of children's cases. UAC asylum cases are held to the exact same legal standard as any other case.

3. Special Immigrant Juvenile Status

Mindful that many children applying for Special Immigrant Juvenile Status (SIJS) are fleeing an abusive parent in their home country and consistent with the TVPRA's intent to protect children from being returned to the hands of their abusers, the TVPRA adjusted the requirements for SIJS. The law now requires that a child prove that one parent abused, neglected, or abandoned the child. The law did not change the standard or level of evidence required, and it still prohibits a child from applying for immigration relief for their non-abusive parent.

4. Trafficking screening for Mexican children

Prior to the 2008 law, Mexican children could be turned around at the border without any consideration of whether the child was a victim of trafficking or an asylum seeker. The 2008 law ensures Mexican children will be screened by the Department of Homeland Security prior to return.

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