



The Defending Borders, Defending Democracies Act Would Undo the U.S. Protection System for Unaccompanied Children

Throughout its one-year duration, the Defending Borders, Defending Democracies Act (H.R. 7372) would undo the U.S. protection system for unaccompanied children by eliminating core anti-trafficking protections, subjecting these children to detention in jail-like CBP facilities for up to one year, and forcing them to wait alone in dangerous conditions in Mexico under an expansive “Remain in Mexico” directive. In doing so, the Act would decimate bipartisan safeguards for this uniquely vulnerable population and ensure children’s return to human trafficking, sexual exploitation, and extreme violence. KIND urges Members of Congress to reject this legislation and to embrace reforms that build upon, rather than tear down, existing protections.

By mandating expulsions of unaccompanied children at the border throughout its one-year span, the Act would ensure those children’s return to trafficking, sexual abuse, and other harm.

- Congress passed the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) on a sweeping bipartisan basis after careful consideration of ways to prevent the return of unaccompanied children to human trafficking and other dangers.
- In crafting this landmark legislation, Congress recognized unaccompanied children’s unique vulnerabilities to trafficking and exploitation, including their age, developmental stage, and comprehension and communication barriers. The TVPRA aims to meet those vulnerabilities by ensuring screenings of unaccompanied children arriving at the border to determine whether they are victims or at risk of trafficking and to provide a full and fair process for these children to seek legal protection in the United States from the dangers they fled.
- By requiring the expulsion of unaccompanied children at the U.S.-Mexico border for a year following the bill’s enactment, the Defending Borders, Defending Democracies Act would effectively nullify these TVPRA protections; dismantle Congress’s central framework for keeping unaccompanied children out of the hands of traffickers; and strip law enforcement agencies of critical tools for detecting and prosecuting child trafficking incidents.
- In the process, the Act promises the return of unaccompanied children to trafficking, sexual exploitation, gender-based violence, and further dangers—precisely the outcomes the TVPRA was designed to prevent. The Act generally requires unaccompanied children’s expulsion to Mexico even when impacted children have no family members or other connections there—precluding family reunification and heightening their risk of exploitation.

The Act’s limited exceptions to mandatory expulsions are wholly inadequate to provide unaccompanied children any meaningful opportunity to access humanitarian protection in the United States.

- The legislation provides a cursory exception to its border expulsion requirement by permitting a screening/interview process for withholding of removal and Convention Against Torture protection available to individuals who affirmatively express a fear that their lives or freedom would be threatened, or that they would be subjected to torture, in the countries to which they face expulsion.
 - Unaccompanied children often lack the capacity to articulate such a fear, much less to comprehend that this articulation is necessary to access a legal process or to understand to which countries they could face expulsion. It is absurd to expect children as young as two years old to affirmatively meet this standard.

- Even if unaccompanied children entered this screening/interview process, it would be virtually impossible for them to navigate it without an attorney, yet the bill provides for no mechanism whereby any child would have a fair opportunity to obtain counsel. As such, this exception is effectively a barrier—not an avenue—to protection.
- Under a different provision, the bill directs CBP officials to: (1) determine the *maximum* number of individuals per day whom ports of entry can safely process and place with nongovernmental organizations for short-term shelters and services; and (2) develop a strategy for identifying eligible individuals, prioritizing specific populations.
 - The Defending Borders, Defending Democracies Act fails to ensure a *minimum* level of daily processing of protection seekers at the U.S.-Mexico border. Indeed, it provides no minimum requirements at all for ensuring that protection seekers generally—and unaccompanied children specifically—can safely present at ports of entry as consistent with the TVPRA and other bipartisan statutes.
 - The bipartisan TVPRA and *Flores* Settlement Agreement direct DHS to transfer unaccompanied children into child-appropriate Office of Refugee Resettlement shelters within 72 hours. Yet the Defending Borders, Defending Democracies Act requires a determination that eligible individuals at ports of entry could be placed with *nongovernmental organizations*, thereby either upending the TVPRA’s and *Flores*’ longstanding protections or outright prohibiting the processing of unaccompanied children at ports of entry.
 - The bill also omits unaccompanied children as a port of entry processing priority, further indicating that these children would have no meaningful opportunity to access protection at such ports or anywhere else along the U.S.-Mexico border. And it vests the Secretary of Homeland Security with discretionary authority to eliminate *all* exceptions and waivers to mandatory expulsions.

By all but prohibiting DHS from transferring unaccompanied children out of its custody, the Act would subject certain unaccompanied children to jail-like CBP detention for up to the full one-year duration of the Act’s authorities—*more than 120 times longer than permitted under current law.*

- In recognition of unaccompanied children’s unique vulnerabilities, the TVPRA and *Flores* Settlement Agreement require DHS to transfer these children from CBP border facilities into child-appropriate ORR shelters within 72 hours, where child protection authorities then seek to reunify unaccompanied children with loving family members or other safe sponsors in the United States.
- These safeguards reflect bipartisan recognition that CBP detention is fundamentally inappropriate for unaccompanied children, damages their psychological and physical health, and limits their access to counsel. [KIND has documented](#) reports from numerous child clients who lacked sufficient food, water, medical attention, or other basic necessities, and who suffered physical or mental harm, while in CBP custody.
- Yet the Defending Borders, Defending Democracies Act bars the use of federal funds “to transfer or otherwise move an alien in the custody of the Federal Government from a facility in which such alien was first detained to another location for a purpose other than adjudicating such alien’s status.”
- As neither transfers to ORR shelters nor reunifications with family members are carried out for purposes of case adjudications, this provision would supersede the TVPRA and *Flores* by forcing any unaccompanied children not summarily expelled or returned to Mexico to instead languish in CBP custody until completion of their legal cases. Given the immigration court system’s three million-plus case backlog, in many instances children could remain in CBP detention for a full year—*prolonging the current legal limit by 362 days.*
- This would result in profound trauma to detained children; protracted separation from loved ones; and severe overcrowding in and operational strain on CBP facilities.

The Act would subject unaccompanied children to a “Remain in Mexico” program throughout its one-year span, requiring them to wait alone in dangerous conditions in Mexico pending immigration proceedings in the United States.

- The Act mandates a Remain in Mexico policy under which protection seekers arriving to the U.S-Mexico land border through Mexico must be returned to and wait in Mexico pending immigration proceedings in the United States. Nowhere does the Act clarify the relationship between this provision and other provisions mandating expulsions at the border.
- The Act contains no exemption for unaccompanied children from this Remain in Mexico mandate—going beyond even the Trump Administration’s Remain in Mexico policies, which expressly exempted such children in light of their particular vulnerabilities.
- This program would therefore render children who lack parental protection vulnerable to predation by cartels and other bad actors in Mexico for up to a year.
- In most cases it would prove impossible for children as young as two years old, alone in Mexico, and without the guidance of a parent or attorney to somehow negotiate the process for returning to the United States at the appropriate time and place to commence their immigration proceedings.