

June 21, 2017

House Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The signatories of this letter, all devoted to refugee protection, assistance and welcome, write to ask you for your leadership in protecting the most vulnerable among us- by opposing the Protection of Children Act of 2017 (H.R. 495). These organizations are longtime advocates for the protection of all vulnerable people seeking refuge, including unaccompanied children, refugees, asylum-seekers and trafficking victims. We oppose this bill because, contrary to its name, it will take away critical protections for unaccompanied migrant children coming to the United States to escape violence and persecution.

The increased number of unaccompanied children arriving at the U.S. border seeking refuge is something we have seen in our work since 2012. The Northern Triangle region of Central America is one of most violent regions in the world for children. A report by UNICEF found that El Salvador and Guatemala had the two highest rates of murder among children in the world, with Honduras following in seventh place.¹ Numerous reports have described the alarming violence in the region targeting children.² UNHCR found that the majority of unaccompanied children interviewed have personally experienced or witnessed violence by armed criminal actors, domestic abuse and other gender-based violence, forced gang recruitment, death threats, extortion or exploitation through human trafficking.³

H.R. 495 would dismantle much of the existing framework and protections for unaccompanied

¹ *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children* (UNICEF Sept. 2014), available at: https://www.unicef.org/publications/index_74865.html.

² UNHCR (April 4, 2016) Action Urgently needed as Central America Asylum System Claims Soar, <http://www.unhcr.org/print/570379fa9.html>; Clare R. Seelke (February 20, 2014) Gangs in Central America, Congressional Research Service, Publication No. RL34112, 7-5700; World Bank Sustainable Development Department (2011) Poverty Reduction and Economic Management Unit & Latin America and the Caribbean Region, Crime and Violence in Central America: A Development Challenge, World Bank Group <http://bit.ly/25PC44m>; *Children and Families Fleeing Violence in Central America* (WOLA Feb. 21, 2017), available at: <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle>; UNHCR (2013) Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, <http://www.unhcrwashington.org/children>; Women's Refugee Commission(2012) Forced from Home: The Lost Boys and Girls of Central America, <https://womensrefugeecommission.org/forced-fromhome-press-kit>; The Wilson Center (2014) Crime and Violence in Central America's Northern Triangle, https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF_CARSI%20REPORT_0.pdf; Migration Policy Institute(2013) Crime and Violence in Mexico and Central America: An Evolving but Incomplete U.S. Policy Response, <http://www.migrationpolicy.org/research/crime-and-violence-mexico-and-central-america-evolving-incomplete-us-policy-response>; United States Government Accountability Office(2015) Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala and Honduras, <http://www.gao.gov/assets/670/668749.pdf>; UNDP(2013) Human Development Report for Latin America 2013-2014, <http://www.undp.org/content/undp/en/home/librarypage/hdr/human-development-report-for-latin-america-2013-2014.html>.

³ UNHCR (2013) Children on the Run

children set forth in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). H.R. 495 would apply the contiguous country rules to all unaccompanied children. This would shift responsibility to screen children for potential protection to the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) and limit referral to the Department of Health and Human Services' Office of Refugee Resettlement (ORR) to only those children whom CBP finds to have fear of persecution or be subject to trafficking risks. Such a screening process raises significant concerns given that CBP officers are not adequately trained in asylum, trafficking, and other child protection laws or child-friendly and trauma-informed interviewing techniques.

The flaws with CBP's screening of undocumented children has in fact been documented by the U.S. Government Accountability Office in its report entitled "Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody."⁴ The GAO found that 95% of Mexican UC from FY 2009-2014 were returned to Mexico despite frequent indicators of trafficking or fear of return.⁵ 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.⁶ 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 fear⁷ and expressed clearly erroneous views of applicable law.⁸ 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. DHS's letter in response to the GAO report states that it will revise its Form 93 and that both the U.S. Border Patrol (USBP) and CBP's Office of Field Operations (OFO) would issue guidance for assessing fear of persecution. These revisions have yet to be implemented and to date DHS has failed to consult non-governmental organizations with expertise in child welfare, trafficking, and unaccompanied alien children. Consequently, we are highly concerned that requiring CBP to screen all unaccompanied children would result in increased numbers of children being returned to situations of danger, persecution, and human trafficking.

The bill also drastically lengthens the period of time in which CBP can retain custody of an unaccompanied child, despite the fact that CBP facilities are inappropriate for long-term care of children. In CBP facilities, children may not have space to sleep, bedding, clean clothes, access to showers, hot meals, or adequate medical care. No child, especially a child in need of protection, should go without adequate care.

H.R. 495 further limits unaccompanied children's ability to obtain due process. For children afforded a hearing before an immigration judge, it mandates that the hearing take place within 14 days of the

⁴ U.S. Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody* 18-37 (July 2015), available at: <https://www.gao.gov/products/GAO-15-521>.

⁵ GAO Report, *Id.* at 24.

⁶ *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).

⁷ *Id.* at 27-28.

⁸ *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").

CBP screening. It further prohibits government funds from being used to provide legal counsel to the children and would revise certain legal thresholds for protection, making it more difficult for children to obtain legal relief. This truncated timeframe for adjudication coupled with lack of counsel will make it incredibly difficult for children to access protection. Children often require a safe space and time to recover before they are comfortable sharing their trauma. In addition, children without legal representation are five times more likely to be removed to a country where their lives are in danger. For these reasons, we believe the policies set forth in H.R. 495 will prohibit fair hearings and impede justice.

Finally, the bill also requires ORR to share information with DHS, including immigration status, regarding family members (sponsors) providing care to unaccompanied children pending their immigration proceedings. If the sponsor is undocumented, H.R. 495 would require DHS to initiate removal proceedings. This would put some families in the impossible situation of leaving their children with strangers or placing themselves at the risk of deportation. The undoubted chilling effect it will have on sponsors coming forward will contribute to family separation and lead to unnecessary costs on ORR to keep the children in prolonged government custody.

In sum, H.R. 495 would undermine our foundational legal framework governing the identification, custody, and treatment of unaccompanied immigrant children. It would lead to increased numbers of children being returned to dangerous and life-threatening situations, in violation of both U.S. and international law. Thus, we urge you to reject H.R. 495 and to recommit to protecting all children in the United States, regardless of immigration status.

Sincerely,

Advocates for Human Rights
American Jewish Committee (AJC)
Amnesty International USA
Anti-Defamation League
Bethany Christian Services
Catholic Charities of the Diocese of Baton Rouge
Catholic Charities of Southwest Kansas
Christian Community Development Association
Church World Service
Community Legal Center
Community Relations Committee of the Jewish Federation of Greater Rochester
The Episcopal Church
Esperanza Center, Associated Catholic Charities, Inc.
Ethiopian Community Development Council, Inc.
Evangelical Lutheran Church in America
Franciscan Action Network
Franciscan Peace Center
Friends Committee on National Legislation
Gulf Coast Jewish Family and Community Services, Inc.
Jewish Council for Public Affairs
Jewish Family Service of Los Angeles
Jewish Family Service of San Diego
Jewish Family Services of Silicon Valley
Jewish Labor Committee
HIAS

Hispanic Interest Coalition of Alabama (HICA)
Human Rights Initiative of North Texas
Human Rights Watch
International Rescue Committee
Mennonite Central Committee U.S. Washington Office
Leadership Team of the Felician Sisters of North America
Lutheran Family Services Rocky Mountains
Lutheran Immigration and Refugee Service
Lutheran Social Services of North Dakota
Lutheran Services Carolinas
Lutheran Services Florida, Inc.
Lutheran Services of Georgia
Lutheran Social Services of New York
Mosaic Family Services (Dallas, TX)
National Center for Youth Law
National Council of Jewish Women
National Immigrant Justice Center
Northern Virginia Family Service
Northwest Immigrant Rights Project
Office of Social Justice, Christian Reformed Church in North America
Presbyterian Church (U.S.A.)
Public Counsel
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Refugee Services of Texas
Sisters of St. Francis of the Neumann Communities
Sisters of Saint Francis JPICC
Southeast Asia Resource Action Center (SEARAC)
Southwest Key Programs
Tahirih Justice Center
Tulsa Immigrant Resource Network
Unitarian Universalist Service Committee
UC Hastings Center for Gender and Refugee Studies
U.S. Committee for Refugees and Immigrants
Women's Refugee Commission