

July 26, 2017

Dear Chairman Goodlatte, Ranking Member Conyers and members of the committee:

The Proposals in H.R. 391 Would Send Legitimate Refugees and Children Back to Danger

The undersigned organizations, concerned with the assistance and protection of refugees and children, strongly oppose the “Asylum Reform and Border Protection Act” (H.R. 391). The provisions included in the Asylum Reform and Border Protection Act of 2017 (H.R. 391) and the Amendment in the Nature of a Substitute offered by Representative Johnson would severely undermine access to asylum in the United States and attempts to eliminate access to protection for Central American refugees in particular. The bill would lead to the deportation of legitimate refugees with well-founded fears of persecution, leave others in immigration detention for months, and put children at serious risk of return to trafficking, persecution, or death in their home countries. Various provisions would deny asylum to refugees even if they are credible and have well-founded fears of persecution. The bills are inconsistent with American ideals and would erode the United States’ legacy as a global leader in the protection of refugees and victims of trafficking.

Among many changes to law, the Asylum Reform and Border Protection Act of 2017 would:

- **Raise the expedited removal screening standard to an unduly high level.** The bill would require that an asylum seeker – in order to even be allowed to apply for asylum – not only show a “significant possibility of establishing eligibility for asylum” but also prove it is more likely than not that his or her statements are true. This high standard is not appropriate for a screening process, and the conditions under which interviews are conducted – in immigration detention facilities, sometimes over the phone, with traumatized applicants, often without the assistance of counsel, and using interpreters of variable quality – would lead to the deportation of many asylum seekers with legitimate claims. Even under the current standard, genuine asylum seekers are sometimes denied “credible fear” and the chance to file an application for asylum. For example, a transgender asylum seeker was denied credible fear despite supporting letters from human rights organizations and extensive country information backing up his request. These practices risk the United States violating the principle of non-refoulement, an international legal obligation.
- **Appear to prevent arriving asylum seekers who have passed the credible fear screening process from being paroled from immigration detention,** instead leaving them in jails and jail-like facilities for months or longer, even though there are more fiscally-prudent and humane alternatives that have been proven effective. The changes to the parole statute are so significant that they would not only impact asylum seekers but would prevent the United States from quickly bringing prominent political dissidents or human rights advocates at risk abroad to safety here.
- **Deny asylum to large numbers of refugees based on transit or stays in countries where they had no legal status,** or no lasting legal status, and to which they cannot be returned in most cases. Refugees - who may have languished in a refugee camp for decades without the ability to legally work, access education or secure legal permanency - with valid claims would be left in a state of uncertainty, with no prospects for a durable solution and no secure future for themselves and their children. Many would be left in the United States under orders of removal and could spend the rest of their lives unable to be returned to their countries of origin and permanently separated from their families. Moreover, this provision risks effectively shutting down the entire U.S. refugee resettlement program, which has ensured global leadership on refugee protection for decades, resettling more refugees than any other nation.

- **Terminate the asylum status of asylees** for returning to their home country for “less than a compelling reason” - an overly burdensome standard. Many asylees have family living in their countries of origin and may need to temporarily return despite the dangers associated with doing so. Instead, “good cause” would be a more reasonable standard for those with asylum or refugee status.
- **Allow asylum applicants and unaccompanied children to be bounced to third countries** (such as Mexico) in the absence of any agreement between the United States and the countries in question for the reception of asylum seekers. “Safe third country” policies are meant to improve the management of refugee claims by requiring asylum seekers to seek protection in the first country they arrive in. However, the Mexican migration system lacks safeguards necessary to protect refugees from return to persecution, and the woefully understaffed and flawed Mexican asylum system leaves many refugees without protection. Moreover, asylum seekers and asylees in Mexico face kidnappings, torture, rape, trafficking, and other grave dangers. For example, soon after Mexico granted Mr. D asylum in February 2016, his friends and family in El Salvador informed him that gang members knew his whereabouts. He was later kidnapped at a bus station in southern Mexico, beaten for several days by his captors, and forced to witness the rape of female migrants.
- **Categorically deny asylum and withholding of removal to refugees targeted for criminal harm--including rape and killing--based on their membership in a particular social group in their countries of origin.** Misleadingly titled “limitation on eligibility for asylum based on generalized violence,” section 14 of the bill would in fact bar from asylum and withholding of removal any person who has been or has a fear of becoming a victim of “a crime” and is being subjected to such harm due to his or her membership in a particular social group. Most acts that individually rise to the level of persecution under U.S. and international law *are crimes*, under the laws of the country where they are carried out as well as the laws of the United States. These include rape, severe beatings, kidnapping, disappearance, etc. The extraordinarily broad provisions in sections 14 and 15 not only contravene international law, but they would deny protection to asylum seekers who have been beaten for being gay, who have suffered horrific domestic abuse, who have been treated as property by virtue of their status as women, or who have been sex trafficked by gangs, to name but a few examples. A woman subjected to years of severe domestic violence by her husband with no state protection, for example, could be barred from asylum under this provision. Any applicant whose fear of suffering harm was on account of one of the *other* protected grounds in the refugee definition--race, religion, nationality, or political opinion--would be required to prove that to a *higher* standard if the harm he or she feared would also be a crime.
- **Section 14 would also effectively eliminate asylum eligibility or withholding of removal for asylum seekers who have been victims or who have fears of persecution related to gang violence in their home country.** The United Nations High Commissioner for Refugees (UNHCR) has found that children and women in Northern Triangle countries and in Mexico are particularly vulnerable to gang violence and other harm. This provision will likely disproportionately impact thousands of Central American refugees who flee to the United States on the basis of gang violence, as well as women and children who have been victims of domestic abuse. The bill ultimately prioritizes asylum status for families who want to homeschool their children over children, families, and other individuals who are being murdered, raped, trafficked, and threatened by criminal gangs or other perpetrators of violence.
- **Bar from asylum and withholding of removal the victims of what the bill describes as “rogue officials.”** Section 17 of the bill would bar from protection persons targeted by government agents deemed to be acting “outside the scope of their official capacity.” This exclusion has no basis in

refugee law and would result in the denial of asylum to, for example, a gay man beaten and raped by police officers acting without official sanction.

- **State that the government not bear expense for counsel.** The bill also states that in no instance will the government bear expense for counsel for anyone in removal or appellate proceedings. Children – including toddlers - the mentally disabled, and other vulnerable people cannot represent themselves in our complex immigration system. Studies have confirmed that representation encourages appearance for court and saves the government money. Robust pro bono representation leverages significant private sector investment; however, it requires substantive infrastructure to be successful.
- **Codify into law a confusing and contested legal standard which is out of step with international guidance.** The bill seeks to include additional requirements—beyond the immutability standard which was recognized by courts for over twenty years—into the definition of a “particular social group.” These additions would raise the evidentiary burden for asylum seekers and will have a particularly harsh impact on women and children fleeing gender-based violence, gang violence, and other forms of persecution.

Congress should not enact legislation that undermines the ability of those fleeing violence and persecution to secure U.S. protection. Congress should not pass proposals, like those included in H.R. 391, that would prevent refugees from accessing or receiving asylum from persecution.

The proposed changes to the system are not necessary to the integrity of our asylum system, and expose children and women in particular to dangerous removals to their home or third countries. The current asylum 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 enhanced referral of cases for criminal prosecution.

As a global leader in protecting the most vulnerable, it is important that the United States uphold its commitment to refugees and asylum-seekers who come to our country in search of safety, freedom and new lives for themselves and their families. As conversations continue in the House of Representatives around how to best reform our immigration laws, we urge you to oppose the Asylum Reform and Border Protection Act of 2017 and similarly punitive laws.

Thank you for your consideration in this matter. Our organizations hope you will ensure that any immigration reform upholds the United States’ proud history and tradition of protecting and welcoming victims of persecution, oppression, and torture.

Sincerely,

National

African American Ministers In Action
African American Ministers Leadership Council
American-Arab Anti-Discrimination Committee
Americans for Immigrant Justice
Amnesty International USA
Asian Pacific Institute on Gender-Based Violence
ASISTA
Asylum Seeker Advocacy Project (ASAP) at the Urban Justice Center
Casa de Esperanza: National Latin@ Network

Center for Gender & Refugee Studies
Center on Immigration and Child Welfare
Child Welfare League of America
Church World Service
Committee in Solidarity with the People of El Salvador (CISPES)
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces
Detention Watch Network
Evangelical Lutheran Church in America
Franciscan Action Network
Friends Committee on National Legislation
HIAS
Human Rights First
Human Rights Watch
Interfaith Worker Justice
International Rescue Committee
Jesuit Refugee Service/USA
Juvenile Law Center
Kids in Need of Defense
Latin America Working Group
Leadership Conference of Women Religious
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Micah Leadership Council
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Association of Social Workers
National Domestic Violence Hotline
National Immigrant Justice Center
National Justice for Our Neighbors
National Network to End Domestic Violence
Rainbows for All Children
Redemption Song Inc.
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Scalabrini International Migration Network
Tahirih Justice Center
The Episcopal Church
The United Methodist Church - General Board of Church and Society
Unitarian Universalist Service Committee
Urban Justice Center Domestic Violence Project
Women's Refugee Commission

State

American Gateways
Atlas: DIY
Bellevue/NYU Program for Survivors of Torture
California Coalition Against Sexual Assault (CALCASA)
CASA
Center for the Human Rights of Children, Loyola University Chicago
Chicago Public Schools
Delegate Ana Sol-Gutierrez, Maryland House of Delegates, District 18

Faith Organizing Alliance
Family Paths, Inc
Human Rights Initiative of North Texas
Justice for Our Neighbors West Michigan
Kino Border Initiative
Law Office of Usman B. Ahmad, PC
Massachusetts Law Reform Institute
Montgomery County Education Forum
Northern Illinois Justice for Our Neighbors
Public Counsel
Ready at Five
Refugio del Rio Grande
Representative Terry Alexander, South Carolina House of Representatives, District 59
The Good Shepherd United Church of Christ
University of San Francisco Immigration and Deportation Defense Clinic
USC International Human Rights Clinic
Virginia Beach Interdenominational Ministers Conference
Young Center for Immigrant Children's Rights at the University of Chicago

[1] Human Rights First, Family Detention: Still Happening, Still Damaging (October 2015).

[2] Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," 164 U. Penn. L. Rev. 1 (2015).