human rights *first*

American ideals. Universal values.

FACT SHEET: JANUARY 2019

The *End the Shutdown and Secure the Border Act* Would Ban Asylum for Central American Children

The legislation introduced would:

- ☑ **Create a new asylum ban**: The legislation immediately bars children from El Salvador, Guatemala, and Honduras from requesting asylum at a U.S. port of entry or after crossing the U.S. border. This would gut current protections for refugees under domestic immigration law. Section 208(a) of the Immigration and Nationality Act allows any asylum seeker who arrives in the United States to request protection at a port of entry or after having crossed the border. Children with legitimate, well-founded fears of persecution who would otherwise qualify for asylum would be deported to the place where they fear harm, unless they are able to meet the much stricter requirements for withholding of removal or Convention Against Torture.
- ☑ **Remove protections for unaccompanied children from Central America**: The bill strips the protections included in the Trafficking Victim's Protection Reauthorization Act (TVPRA) for unaccompanied children from El Salvador, Guatemala, and Honduras. It subjects children from these countries to immediate, involuntary repatriation after an interview with a Customs and Border Protection officer—not a trained asylum officer—unless the child can show that it is more probable than not that the child would be trafficked or would qualify for asylum. This places the burden on children who are almost never represented by counsel to establish their need for protection rather than on the U.S. government to show that the child would not be at risk and has voluntarily decided to return. The standard applied to Central American children would be even higher than the standard adult asylum seekers must meet during a credible fear interview to be permitted to seek asylum.
- ☑ **Establish a pseudo-resettlement scheme for children from Central American**: Under the Trump-McConnell proposal, children from El Salvador, Guatemala, and Honduras can only receive "asylum" by applying at processing centers, including the countries where they fear persecution, to be established outside of the United States within 240 days.
    - Until those centers are operational, no child fleeing Central America who is outside the United States when the legislation is adopted will be able to seek refugee protection in the United States, leaving an eight-month period when there would be no possibility of even applying for resettlement.
    - When it is operational, the program will be permitted to resettle only 15,000 children annually out of a maximum of 50,000 applications. These limitations could leave children with legitimate, approvable asylum claims potentially waiting for years in life-threatening circumstances for their applications to be granted—without any system created to expedite requests for children in acute danger or in need of immediate medical attention. Applications for asylum in the United States are not subject to numerical limits because the immigration law requires the government to accept any and all such applications.
    - To qualify for the scheme Central American children must have a parent or guardian already in the United States. This extraordinary new requirement would leave the most vulnerable children, who have been orphaned or otherwise abandoned and lack a legal guardian, completely shut out.
    - The Secretary of Homeland Security must determine that resettling the child would be in the "national interest"—a requirement not imposed on adult asylum seekers, as asylum has always been recognized as an issue of individual humanitarian protection, not a question of political interests.

- Only unaccompanied children will be guaranteed the right to be represented by counsel (at their own expense). This will mean that children living with a parent who fear persecution will not be guaranteed the right to be assisted by an attorney at an asylum interview. This denial of access to counsel is all the more egregious because the decision of an asylum officer to grant or deny asylum cannot be challenged in any court.
- Finally, the government will charge a fee to "deter frivolous applications," which is likely to block the poorest and most vulnerable asylum-seeking children from receiving protection. It is both absurd and offensive to ask children, including children without parents or guardians, to pay for the chance to be safe from persecution.

The bill would impose further restrictions on asylum, by:

☑ **Allowing adjudicators to bar applications for asylum as "frivolous" if the applicant's request for asylum was even "in part" motivated by the desire to receive legal authorization to work.** Given that asylum applications often take years to adjudicate, many asylum seekers hope and need to work while waiting for a final decision, as the U.S. government does not provide food, accommodation, financial assistance, or any other direct support to asylum seekers. Punishing refugees by barring them from asylum because they must support themselves and their families while they wait is simply cruel. The proposed legislation would not even provide asylum seekers an "opportunity to account for any issues with his or her claim" before finding the application frivolous.

☑ **Restricting asylum seekers from withdrawing asylum applications to pursue alternative forms of immigration relief.** Asylum seekers sometimes qualify for other types of immigration status, such as visas for victims of certain serious crimes (U visas) and human trafficking (T visas) who cooperate with authorities, as well as because of abuse by a permanent resident or U.S. citizen spouse or parent (VAWA). Because of the lengthy adjudication process, applicants can become eligible for these alternatives after filing the asylum application. Limiting the ability of asylum seekers to pursue these forms of relief could disincentive victims of crime from reporting to or cooperating with the police. Further, some asylum seekers may wish to pursue an alternative path to permanent status to avoid recounting past persecution and reliving the trauma they experienced in their home countries.

☑ **Applying the bars to asylum at the credible fear screening would likely result in legitimate refugees being returned to persecution.** During a credible fear interview asylum officers assess whether there is a "significant possibility" the applicant could qualify for asylum after a full hearing. This legislation would allow the government to deport refugees with well-founded fears of persecution if the officer finds a bar to asylum applies. But analyzing these bars involves complex legal and factual consideration not suited to a preliminary screening. For instance, the bars include whether an asylum seeker has committed a serious non-political crime outside the United States or been firmly resettled in a third country. Determining whether a criminal conviction in Nicaragua or Egypt stems from a legitimate criminal charge or is part of the government's persecution turns on complicated questions of law and fact that should be resolved by an immigration judge after a full hearing, not during a preliminary screening. Similarly, establishing whether an asylum seeker received permanent residence in another country is a question of that country's immigration laws, which may be difficult for detained asylum seekers to access, understand, or explain during an initial fear screening rather than with the assistance of a lawyer during a full court hearing. The vast majority of asylum seekers go unrepresented by legal counsel during these interviews. It is non-sensical and risks deporting refugees to persecution to decide the bars to asylum during a preliminary screening.