

Analysis of the HUMANE Act

July 2014

On July 16, 2014, Senator Cornyn and Congressman Cuellar introduced the Helping Unaccompanied Minors and Alleviating National Emergency (HUMANE) Act (S.2611/H.R.5114) to address the recent influx of unaccompanied children entering the United States from Central America. This bill attempts to resolve the crisis by stripping the legal protections in the Trafficking and Victims Protection Reauthorization Act of 2008 (TVPRA) that ensure due process for unaccompanied children, including access to counsel and a fair determination before an immigration judge. In addition, this bill aims to expedite the repatriation of unaccompanied children, without regard for the unstable political climates prevalent in their home countries or the safety well-being and human rights of these children.

Key Provisions

Section 101- Repatriation of Unaccompanied Children

- Amends the TVPRA to include children from Mexico, Canada, El Salvador, Guatemala and Honduras and “any other country that the Secretary (of Homeland Security) determines appropriate” to be screened subject to contiguous country screenings only- Within 48 hours of apprehension, CBP officers will screen children to determine whether they have been trafficked, have a credible fear of persecution or admissible through any other provision of the INA. No formal immigration hearing required before removal
- If CBP finds that the unaccompanied child may qualify for a removal exception or is admissible, the unaccompanied child will appear before an immigration judge within 7 days of the CBP screening
- While waiting to make a claim before an Immigration Judge, the child cannot be released to the custody of a sponsor and must remain in the custody of the government

Section 102- Expedited Due Process and Screening of Unaccompanied Children

- Enhances professional training for CBP officers to include information on country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators
- After screening by a CBP officer, the child’s case must be heard before an Immigration Judge within 7 days and the Immigration Judge has 3 days to issue an order.
- The hearing before an immigration judge does not have to be in person and can be conducted through video conference or phone conference
- No legal representation is provided for the children, but they may retain counsel on their own
- The Attorney General has the discretion to withdraw a child’s application at anytime and immediately remove the child
- Only evidence from the hearing will be considered and the unaccompanied child has burden of proof by preponderance of the evidence

Section 104- Emergency Immigration Judge Resources

- Provides 40 Immigration judges to provide hearings for unaccompanied children within 14 days of enactment

Section 105- Protecting Children from Human Trafficking, Sex Offenders, and Other Criminals

- Prohibits placement of UAC with sponsors who have been convicted of trafficking or a sex offense- everyone has to have a criminal check

Sections 201-205: Border Security and Trade Facilitation

- More resources devoted to CBP to study and implement enhanced border safety and drug interdiction
- Enhanced technology

- Expands and authorizes operations of the National Guard to assist with the humanitarian effort and to strengthen border protections

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Rolls Back TVPRA Legal Provisions that Ensure Due Process

This bill seeks to expedite the removal process by removing protections for unaccompanied children under the TVPRA. Under current law, unaccompanied children from contiguous countries (Mexico and Canada) are screened by CBP within 48 hours of arrival to determine whether the child is a victim of trafficking, has a credible fear of returning to their home country and whether the child can make an independent decision to withdraw an application for admission into the United States. Studies indicate that CBP screenings of Mexican children overwhelmingly presume that these children have no needs rather than ruling out specific needs, which is contrary to the intent Congress had of protecting the interests of unaccompanied children when it enacted the TVPRA.¹

Children from non-contiguous countries are placed in removal proceedings where they have to appear before an immigration judge before the final removal decision is made. This bill removes this distinction between contiguous countries and children from Central America and creates authority for the Secretary of the Department of Homeland Security to designate any country he deems appropriate to this less rigorous screening process.

The language of this bill specifically adds El Salvador, Honduras and Guatemala as countries subject to contiguous screening procedures. This measure severely restricts the due process rights of children to have their case heard before an immigration judge.

Fails to Guarantee Legal Counsel

This bill also fails to take measures that would ensure access to counsel for unaccompanied children. At the most fundamental level, children need to know that they have been placed in removal proceedings and when to appear for their hearing. In addition, according to the Refugee and Immigrant Center for Education and Legal Services (RAICES), 63 percent of unaccompanied children are eligible for relief including asylum, special immigrant juvenile status, and U-visa or T-visa eligibility.² However, they have no way of ascertaining what type of relief they can apply for, much less how to apply without legal counsel. This bill permits the child to obtain pro bono and private legal representation, but does not guarantee or provide funding for lawyers. The burden to find a lawyer rests on the unaccompanied child, which is unacceptable. Having legal representation has been recognized as the single most important factor in the outcome of an asylum claim and should be provided for every unaccompanied child.

No Provisions to Address the Root Cause of Influx

The current influx of children coming to the United States is the result of a humanitarian crisis. The main reasons cited by the children who fled their home countries, according to a recent UNHCR report³, were push factors such as extreme violence and exploitation in their home communities. The lack of state protection from drug traffickers, gangs, as well as increasing poverty and unemployment further exacerbate the humanitarian crisis in the region. In order to adequately address the issue of children fleeing their homes, this bill should contain provisions that direct the federal government to work with Central American countries in reducing violence and building supports that improve the economy and conditions for the people in those countries. This bill devotes a large portion of its resources to making the border more secure but does not provide for the type of assistance that would create stability in the region which would allow children to safely stay and thrive in their home countries.

Promotes Repatriation Without Safeguards to Protect the Well-Being of Children

The HUMANE Act, in its current form, aims to repatriate the children who enter the United States in an expedited way, but it fails to ensure that there are services and infrastructure support for repatriated children when they return to their home countries. Many Central American countries are still experiencing violence and lawlessness. The children who have made the arduous journey have experienced significant trauma and may have significant physical and mental health needs for which

services may not be available to them in their home countries. Sending the children back to the same environment does not guarantee that they won't try to return again and fails to make their safety a priority.

Fails to Prioritize the Best Interest of the Child

This legislation does not take into account what is in the best interest of the child, a standard used across the United States in domestic courts when the well-being of a child is at stake. Instead, the HUMANE Act increases trauma to unaccompanied children by either returning them back to dangerous situations they have fled from without adequate protection, or by holding those eligible for a hearing in detention longer, instead of releasing them to a sponsor. Children held in detention are at risk for psychosocial and developmental problems that can lead to long-lasting trauma.⁴

Conclusion

While a more efficient legal process is desirable to process the cases of unaccompanied children, it should not be done at the expense of a migrant child's due process rights and best interests. More lawyers are needed to assist children through the immigration courts and hear their cases and children should be reunited with their families as soon as possible.

¹ *Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border*, Confidential Report United Nations High Commissioner for Refugees, Regional Office Washington D.C. for the United States and the Caribbean, June 2014. Accessible at: http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf

² RAICES Letter to President Obama and Senate and House Leadership on July 22, 2014. Website for Press Release and Letter: http://media.wix.com/ugd/8ef308_ed73e875292f434091bfdd0d29b7d1f3.pdf

³ *Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection*. United Nations High Commissioner for Refugees (2014).

⁴ Corlett, D., with Mitchell, G., Van Hove, J., Bowring, L., Wright, K. (2012) *Captured Children*: Melbourne, International Detention Coalition. Accessed at: http://idcoalition.org/wp-content/uploads/2012/03/Captured_Childhood-report.pdf