

Legal Protections for Unaccompanied Minors in the Trafficking Victims Protection Act of 2008

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What is the TVPRA?

The Trafficking Victims Protection Reauthorization Act (TVPRA) is a law that was passed in 2008 that strengthened federal trafficking laws and added provisions that govern the rights of unaccompanied immigrant children who enter the United States. The law was passed with broad bipartisan support after careful consideration and debate. The bill was recently reauthorized in 2013.

Key TVPRA Provisions

The TVPRA distinguishes legal procedures for unaccompanied children who are residents or nationals of non-contiguous countries and contiguous countries (Mexico and Canada).

Children from non-contiguous countries are:

1. Referred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours for screening and placement in the least restrictive setting possible;
2. Placed in removal proceedings;
3. Placed in the care of a family member, ORR shelter, of foster home pending removal hearing; and
4. Provided access to counsel, to the greatest extent practicable, to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.¹

Children from contiguous countries must be screened within 48 hours of apprehension to determine:

1. Whether the child has been trafficked or is susceptible to trafficking upon return to their home country
2. Whether the child has a credible fear of returning to their home country
3. Whether the child is able to make an independent decision to withdraw an application for admission into the United States, also known as voluntary departure.

If an immigration officer determines that the child must be returned to Mexico or Canada, they must be returned to appropriate employees or officials, such as a child welfare agency, and during reasonable business hours.² Furthermore, the United States must enter into agreements with those countries to ensure that children who are repatriated will not be trafficked.

In addition, the following legal protections are provided for in the TVPRA:

- Legal orientation presentations: These presentations are supposed to provide information on due process rights and highlight the importance of appearing at immigration proceedings³
- Access to counsel: HHS must ensure that all unaccompanied children in its care, to the greatest extent possible, are provided with counsel to represent them in legal proceedings or matters and protect them from mistreatments, exploitation and trafficking.
- Child advocates: HHS has the authority to appoint child advocates for trafficked and vulnerable children to promote the best interest of the child.

Congress made it clear that the goal of these provisions was to protect children “who had escaped traumatic situations such as armed conflict, sweatshop labor, human trafficking, forced prostitution, and other life threatening circumstances.”⁴

Preserving and Strengthening the TVPRA for Unaccompanied Children

Federal policymakers are currently considering rolling back protections within the TVPRA in order to address the recent influx of child refugees fleeing to the United States from Central America. For example, recent proposals seek to subject children from non-contiguous countries to the same process as children from contiguous countries. To roll back such protections in the name of expediency would undermine child safety and due process. Specifically, such changes could mean:

- **More children will be at risk of falling through the cracks due to inadequate screenings.** Currently, very few Mexican children are referred to ORR despite comprising a significant percentage of all unaccompanied children. Reports have found that Customs and Border Patrol agents have failed to provide adequate screening in these cases, largely due to time restraints and the fact that CBP personnel lacks the training and expertise to appropriately screen children.⁵
- **More children will go without a hearing to determine their eligibility for relief, undermining due process.** Removal hearings are an opportunity for immigrant children to bring their case before an immigration judge so that he or she can make an informed decision as to whether or not the child qualifies for some type of relief from removal. In many instances, unaccompanied children who have fled from their home countries are eligible to apply for asylum, Special Immigrant Juvenile Status (SIJS), U-visa, or T-visa. A recent analysis by Kids In Need of Defense estimates that 40-60 percent of the recently arrived children qualify for relief under current immigration laws.⁶
- **More children will go without access to legal representation and/or child advocates.** Immigration laws and proceedings are extremely complex and a child cannot be expected to navigate the system. Providing children access to counsel and child advocates is critical to improve a child’s chances of obtaining appropriate relief.
- **More children will be put in harm’s way.** Rolling back protections and fast-tracking the legal process for children without appropriate resources puts children’s lives at risk. Research consistently documents the fact that extreme violence and instability in Honduras, El Salvador, and Guatemala are the primary reasons driving children to flee the region.⁷ It would be irresponsible and inhumane to send children back without first ensuring their right to a hearing, working with regional governments to curb the violence, and investing in the development of effective repatriation and reintegration programs.

Recommendations

Rolling back any of the provisions that ensure a fair hearing and sufficient representation for unaccompanied children would seriously undermine our values of putting children first as well as the spirit of fairness and due process which are cornerstones of the U.S. legal system. Rather than weaken protections for children in the face of this humanitarian crisis, Congress should be strengthening such protections, such as:

- Screening mechanisms for children at the point of apprehension should be strengthened. For example, CBP should contract with child welfare experts to screen children along the border so that children are properly evaluated for trafficking and other humanitarian concerns and connected to services.
- All children should be provided with legal representation. Additional funds for attorneys and immigration judges should be authorized to comply with the access to counsel provision of the TVPRA. The President has requested \$15 million for direct legal representation and \$45.4 million for additional immigration judges to increase case processing. While not sufficient to meet the demand, this dedicated funding is a necessary starting point.

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- The TVPRA should be extended to include formal removal proceedings for children from contiguous countries as well to ensure conformity and fairness for all unaccompanied children in the United States.
- The Immigration and Nationality Act should be amended to include the “best interest of the child standard” so that immigration judges are required to apply this standard when making decisions with regards to children.
- Repatriation should be ordered only when it is safe for the child to return to their home country and only if there are appropriate services in that country that can effectively address the safety and overall well-being of the child.

¹ William Wilberforce Trafficking Victim Protection Act § 235(a)(5)(D), § 235 (c)(5) (2008).

² Id. at § 235(a)(2).

³ Id. At § 235 (c)(4), § 235 (c)(5), § 235 (c)(6).

⁴ Senator Feinstein (CA). “William Wilberforce Trafficking Victims Protection Reauthorization Act.” Congressional Record 154:185 (December 10, 2008) p. S10886 Available from: <https://beta.congress.gov/crec/2008/12/10/CREC-2008-12-10-pt1-PgS10886.pdf>.

⁵ “Children at the Border: The Screening, Protections, and Repatriation of Unaccompanied Mexican Minors.” Appleseed Foundation, 2011.

⁶ Lisa Frydman, Elizabeth Dallam, Blaine Bookey, Center for Gender & Refugee Studies and Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, (2014).

⁷ *Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection*. United Nations High Commissioner for Refugees (2014).