

The House Judiciary Reconciliation Text's Catastrophic Implications for Unaccompanied Children

The reconciliation text recently advanced by the House Judiciary Committee would effectively end the U.S. protection system for unaccompanied children. Specifically, it would foreclose unaccompanied children's access to critical anti-tracking protections enshrined in the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) as well as to safeguards core to the *Flores* Settlement Agreement (*Flores*). In doing so, the bill would force these uniquely vulnerable children into situations of human trafficking, sexual exploitation, abuse, and other dangers. KIND urges Members of Congress to reject this measure and embrace reforms that build upon, rather than tear down, crucial protections that keep children safe.

The text imposes an unprecedented fee structure that would transform federal policy by functionally barring unaccompanied children's access to protection in the United States. Human traffickers would exploit this structure to prey on impacted children.

- The cumulative fees required under this legislation for an unaccompanied child to seek humanitarian relief in the United States would in many cases exceed \$15,000—a prohibitive sum for virtually all unaccompanied children.
 - The fees include:
 - **A minimum \$5,000 fee merely for arriving at the U.S.** southern border between ports of entry in pursuit of safety—a manner of arrival consistent with the TVPRA and that may represent children's only meaningful avenue for seeking protection;
 - **A minimum of \$8,500 in sponsorship costs**—consisting of a \$3,500 sponsor fee and \$5,000 sponsorship bond that lacks any assurance of refund—mandated even of loving parents attempting to reunify with their own children;
 - **A minimum \$1,000 fee for applying** for potentially life-saving asylum;
 - **A minimum \$550 fee for an employment authorization document**, which for many tender-age and teenage children alike may serve as an essential form of identification in the United States, as well as an additional \$550 fee for each 6-month long employment authorization document renewal;
 - **A minimum fee of \$100 per year while awaiting asylum** adjudication amid years-long backlogs;
 - **A minimum fee of \$100 per continuance in immigration court.** Unaccompanied children often request continuances to temporarily delay their court proceedings to give them time to find an attorney or to make an application for legal relief before DHS for which they may be eligible. These requests benefit due process and help immigration judges manage court time efficiently.

- This fee structure—which in key respects operates as a penalty against children seeking safety—would render meaningless Section 235 of the TVPRA as a whole, which Congress passed into law on a sweeping bipartisan basis to ensure that unaccompanied children have a full and fair opportunity to seek humanitarian protection in the United States.
- The costs specifically for unaccompanied children’s applications for asylum and other forms of relief hollow out the TVPRA’s requirement that “applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children.”
- Demanding exorbitant fees from children increases their vulnerability to bad actors who prey on their desperation for legal protection and traffic or exploit them.
 - Because the fee structure would eliminate almost all unaccompanied children’s ability to seek relief and family reunification on their own or through loved ones, it would draw in traffickers and abusers skilled in creating, deepening, and leveraging debt to coerce children into sex and labor trafficking and other forms of exploitation.
 - Traffickers and abusers often use the threat of deportation to recruit and keep noncitizens in exploitative conditions—meaning the same actors who would present themselves as children’s only financial avenue for seeking legal protection in the United States could be obstructing it.
 - The bill therefore creates a catastrophic one-two outcome for unaccompanied children—stripping away any meaningful avenue for seeking safety in the United States while dramatically elevating these children’s vulnerability to trafficking and exploitation.

In the guise of a funding measure, the text would rewrite the TVPRA by setting up a grossly inadequate protection framework for every *unaccompanied child at the border*, virtually ensuring children’s summary return to traffickers and other bad actors.

- Under the TVPRA, DHS must transfer into ORR custody and place into immigration court proceedings all unaccompanied children from non-contiguous countries, ensuring robust screenings of these children by ORR child welfare experts for evidence of human trafficking as well as a fair opportunity to seek legal protection from such harm.
- By contrast, DHS law enforcement officials need only conduct cursory protection screenings of Mexican unaccompanied children before summarily returning them—screenings that have consistently failed to identify evidence of trafficking and other protection needs.
- This text would not only authorize DHS to make these inadequate screenings even weaker by eliminating as a screening criterion whether a child has the mental capacity to choose to return to their country of origin, but also to summarily return unaccompanied children from non-contiguous countries to their countries of origin through this same deficient screening process. In practice, the text would effectively eliminate these children’s right under existing law to a robust trafficking assessment and a fair legal process before an immigration judge, all but guaranteeing children’s return to danger.

The text would ensure that most unaccompanied children remain separated from their family members and in prolonged government custody while at the same time leading to less safe sponsor placements that heighten children’s vulnerability to trafficking and exploitation.

- The \$8,500 minimum sponsorship fees will preclude the vast majority of parents and other family members from reuniting with and caring for their children in safe, loving homes.

- The bill also imposes a policy requirement that the Office of Refugee Resettlement share key information about sponsors—including their immigration status—with the Department of Homeland Security. This would heavily deter parents and other family members from filing sponsorship applications due to fear of immigration enforcement actions.
- By precluding many unaccompanied children's safest sponsorship placements, the bill would lead to prolonged and costly government custody of children that would directly heighten taxpayer expense and serve to keep those children separated from their families indefinitely. It could also make it more likely that those children will be released into less safe sponsor settings, elevating the risk that those children encounter exploitative situations.
- *Flores* sets forth a preference for release of immigrant and refugee children from custody "without unnecessary delay," recognizing child welfare principles that support children's care in the least restrictive setting appropriate to their needs as well as the rights of parents and legal guardians to care for children. The TVPRA similarly provides that an "unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child." By in many cases making it impossible for ORR to secure safe sponsors for children, the provision rewrites *Flores* and the TVPRA while infringing on parental rights.

The text would deprive vulnerable children of attorneys who protect them from trafficking and other dangers.

- By appropriating \$3 billion to ORR yet prohibiting the agency from allocating even a single dollar of that sum to the provision of legal representation, the text would deprive unaccompanied children of their best and often only defenders against exploitation and trafficking—and force children, even as young as two-years old, to face a complex, adversarial legal system alone without any meaningful chance of due process. It would likewise frustrate the government's ability to resolve a child's legal claim for protection in an efficient manner.
- In many cases, an attorney may be the only adult in an unaccompanied child's life to whom that child feels comfortable disclosing information to about trafficking and exploitation. Attorneys may then report to other authorities as appropriate; support child victims' cooperation in bringing perpetrators to justice; and help provide children with a fair process for seeking legal protection against their exploitation.
- Immigration attorneys help ensure that children understand and meet legal requirements under U.S. immigration law, including how, when, and where to appear for immigration court hearings. 98% of children with attorneys show for their hearings.

The text appears to mandate that CBP agents strip-search children as young as 12 years old at the border.

- The bill directs CBP agents to carry out a policy of conducting "examinations" of the bodies of children as young as 12 years old for tattoos or other markings.
- While characterized as a means of identifying gang insignia, this directive raises profound concerns over potential mistreatment and traumatization of young children in U.S. government facilities.

The bill eviscerates *Flores* by authorizing indefinite family detention.

- The text permits DHS to detain families pending removal decisions and/or removal itself. It provides no ceiling on these pendency periods, meaning that children could endure detention for months or even years at grave detriment to their welfare.
- This authorization directly overrules the requirement from *Flores* that children held with their families generally not be detained for longer than 20 days.

The text threatens the return of abused children directly into the hands of the parents who abused them.

- To qualify for Special Immigrant Juvenile Status (SIJS) under the TVPRA, a migrant child must, among other criteria, demonstrate to a state court that she cannot reunify with a parent due to that parent's abuse, abandonment, or neglect. Thus, if a child has fled to the United States from an abusive parent in her country of origin, through SIJS she may be able to remain lawfully in the United States with the other parent—safe from return to the parent that mistreated her.
- The bill effectively alters SIJS criteria by imposing a minimum \$550 fee if children cannot demonstrate an inability to reunify with *both* of their parents due to abuse, abandonment, or neglect. This fee – which will prove prohibitive for many abused and abandoned children, therefore hazards the very outcome Congress sought to prevent through passage of the TVPRA: the repatriation of children “into the hands of trfickers or abusive families.” (H.R. Rep. No. 101-430 (2007)).