

Asylum Reform and Border Protection Act Would Return Persecuted Refugees to Danger

Protecting the Persecuted Is a Core American Value

The U.S. asylum system has protected thousands of refugees from return to places where they would face political, religious, or other forms of persecution. They include: victims of religious persecution from China; women targeted for honor killings, trafficking, and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

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

The provisions included in the Asylum Reform and Border Protection Act of 2017 (H.R. 391) would severely undermine access to asylum in the United States. The bill would lead to the deportation of legitimate refugees with well-founded fears of persecution and leave others in immigration detention for months or longer. The bills are inconsistent with American ideals and would erode the United States' legacy as a global leader in protecting refugees and victims of trafficking.

Among many changes to law, the bill would:

- **Raise the expedited removal screening standard to an unduly high level.** The bill would require that an asylum seeker 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—before even being allowed to apply for asylum. This high standard is not appropriate for a screening process, which is meant to exclude only obviously unmeritorious claims.

Moreover, the conditions under which interviews are conducted—in immigration detention facilities, often over the phone and without legal counsel, with traumatized applicants, using interpreters of variable quality—already lead to the deportation of asylum seekers with legitimate claims. Raising the standard would further limit access to asylum by denying even more asylum seekers the chance to even file an application.

For example, a woman who fled severe abuse and who suffered from chronic post-traumatic stress disorder, along with other mental health conditions, was unable to disclose the severe domestic violence she experienced during her screening interview, and was therefore found not to have a credible fear. Unlike most detained asylum seekers, she had legal representation, who, after significant advocacy, convinced the Asylum Office to re-interview her. This time, she was found to in fact have a credible fear and is now seeking asylum before an immigration judge.

In another case, significant background noise at the detention center and poor quality telephonic interpretation led to a negative credibility determination, even though the asylum seeker made consistent statements outlining the basis of her fear of persecution. In this case as well, it was only

after her attorney requested a re-interview that she was correctly found to meet the credible fear standard; soon after, an immigration judge granted her asylum case.

- **Categorically deny asylum to victims of horrendous crimes—including domestic violence—if the crimes were perpetrated due to the victim’s “membership in a particular social group.”** This provision essentially removes one of the five grounds of protection provided by the Refugee Convention. It will effectively eliminate asylum eligibility or withholding of removal for asylum seekers who have been victims of gang violence or other crimes in their home country, if the crime was or was potentially committed in connection with the asylum seeker’s “membership in a particular social group.”

This extraordinarily broad provision would deny protection to asylum seekers who have been beaten for being gay, who have suffered horrific domestic abuse, or who have been treated as property by virtue of their status as women, to name but a few examples.

- **Prevent asylum seekers from being released from immigration detention on parole.** Asylum seekers who request asylum at a designated port-of-entry (e.g., an airport or official border crossing) would be left in jails and other jail-like facilities without chance of parole even after passing the credible fear screening process. Asylum seekers would remain detained for months or longer, despite the availability of more fiscally-prudent and humane alternatives (such as community-based programs) that have been proven effective. Release from detention is already a tremendous hurdle for asylum seekers, who are often denied parole despite meeting the criteria, or are required to pay unreasonably high bonds.

For example, Mr. R and his wife, a Cuban couple, both passed their credible fear interviews while detained at the Laredo Detention Center in Texas. Immigration and Customs Enforcement (ICE) determined they were eligible for release on parole, but only with payment of a \$7,500 bond—meaning \$15,000 total for both. Mr. R’s father—a U.S. citizen who has lived in Miami for 15 years after escaping political imprisonment in Cuba—is now suffering severe flashbacks to his own detention in Cuba, as he cannot afford the \$15,000 bond to have his son and daughter-in-law released from detention.

- **Allow asylum applicants, including unaccompanied children, to be bounced to a “third country” (such as Mexico) even in the absence of any agreement between the United States and the country 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.

Migrants and refugees in Mexico face risks of kidnapping, disappearance, sexual assault, and trafficking, and Mexican authorities routinely deport individuals to their home countries regardless of whether they fear return to persecution.

For example, in February 2016, Mexico granted Mr. D asylum after he was persecuted by criminal gangs in El Salvador due to his Christian beliefs (his parents were Christian pastors) and resistance to join their gang. Soon after being granted asylum in Mexico, 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.

- **Deny asylum to large numbers of refugees based on transit or stays in countries where they had no legal status, or no permanent legal status, and to which they cannot be returned in most cases.** Refugees with valid claims would be left in a state of uncertainty, with no prospects for a durable solution and no secure future for themselves or 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, and without effective roots for integration. Moreover, this provision risks effectively shutting down the U.S. refugee resettlement program.
- **Prevent the federal government from funding legal counsel for anyone in immigration removal or appeal 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, while also ensuring more just outcomes.

Real Reforms Needed

Instead of passing H.R. 391, Congress should take steps to strengthen the asylum and immigration system including to:

- Ensure the Department of Justice and the Department of Homeland Security refrain from referring asylum seekers to criminal prosecution for “illegal entry” or “illegal reentry” into the United States, in line with U.S. treaty obligations that prohibit the penalization of asylum seekers due to their manner of entry.
- Fund cost-effective alternatives to detention rather than more detention, and ensure the effective implementation of parole and release procedures.
- End the detention of children and their parents.
- Support legal orientation programs and access to counsel measures, including by funding direct legal representation of children, asylum seekers, and other vulnerable immigrants, which improve fairness and efficiency of the immigration system.
- Ensure border officers properly screen and refer asylum seekers to asylum processes, and implement the U.S. Commission on International Religious Freedom (USCIRF) recommendations to protect those fleeing religious and other forms of persecution.