June 17, 2019

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the American Bar Association (ABA) and its more than 400,000 members, I write to express our opposition to S. 1494, the Secure and Protect Act of 2019. This bill would strip critical legal and other protections from immigrant children, not only harming their interests, but also undermining the fairness and integrity of our immigration system.

The ABA supports the preservation and development of laws and procedures that protect or increase due process and other safeguards for immigrant and asylum-seeking children, especially those who have entered the United States without a parent or legal guardian. The current framework for the care and adjudication of unaccompanied children was carefully crafted by Congress, including as provided in Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, to ensure that the law recognized the particular vulnerabilities and needs of these children. The Secure and Protect Act would eviscerate those protections.

Under S. 1494, all unaccompanied children would be returned immediately to their countries of origin unless they pass a cursory screening performed by immigration officers. Law enforcement agents are not equipped with training and child-welfare expertise to screen a child for statutory exemptions, such as specific signs of trafficking or fear of persecution. In addition, S. 1494 makes substantial changes to the two forms of legal relief for which unaccompanied children are most commonly eligible - Special Immigrant Juvenile (SIJ) status and asylum. It would require children who arrive with a parent to meet a significantly higher standard of proof regarding whether they would face persecution in their home countries and restricts the eligibility criteria for SIJ status to children who’ve experienced abuse, neglect, and abandonment by both parents instead of just one. It also would eliminate the ability of unaccompanied children in removal
proceedings to present their asylum claims in a non-adversarial setting before the Asylum Office. These changes greatly increase the chance that a child deserving of humanitarian protection may be returned to face persecution or abuse and neglect.

This bill would also lengthen the time that immigrant children who arrive with a parent may spend in detention from 20 days to 100 days. Additionally, it would prohibit state licensing requirements for family detention centers and allow the Secretary of Homeland Security sole discretion to set the standards for detention of children. These provisions contradict the Flores Settlement Agreement, which was put in place to restrict the length of time children can be detained in immigration detention and to set minimum standards for their care and custody while detained. Medical professionals and child welfare specialists, among others, have warned of the detrimental physical, mental and emotional harm to children caused by even short periods of detention. Instead of seeking to increase detention of children and families, the government should enhance the use of cost-effective alternatives to detention.

We recognize that the large number of unaccompanied children and families entering the country over the past several years has presented some difficult challenges. However, as a country that rightly prioritizes the welfare of children, in our legal system and otherwise, we should not significantly diminish protections in place to ensure the appropriate treatment and adjudication of immigrant children. We strongly urge you to oppose S. 1494 and any similar legislation.

While this letter focuses on our concerns with respect to children, we also are deeply troubled by the dramatic changes the bill proposes to the U.S. asylum system. Since the passage of the Refugee Act of 1980, the United States has established procedures to allow those fleeing persecution to apply for asylum regardless of how they enter the country. This legislation would end U.S. asylum law as we know it, and restrict asylum to those who enter the country at a designated port of entry. We are opposed to the evisceration of our country’s asylum laws and urge that the United States continues to provide full and fair access to the current asylum system.

Sincerely,

Robert M. Carlson
President

cc: Members of the Senate Judiciary Committee