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June 14, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Bar Association (ABA) and its more than 400,000 members, I write to express our opposition to H.R. 495, the "Protection of Children Act of 2017." Contrary to its title, this bill would strip critical legal and other protections from unaccompanied alien 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. This so-called Protection of Children Act would eviscerate those protections.

Under H.R. 495, unaccompanied children would be subject to an expedited screening process performed by Border Patrol officers. Law enforcement agents are not equipped with training and child-welfare expertise to screen a child for specific signs of trafficking, fear of return or persecution. This assessment should be made by a trained child welfare specialist, and if one is not available, the child's lawyer. In addition, H.R. 495 would lengthen the period of time that children may be held in the custody of Customs and Border Protection (CPB) from 72 hours to 30 days. The current 72 hour limit ensures that unaccompanied children are quickly moved to an appropriate placement rather than remain for lengthy periods of time at temporary CBP holding centers ill-equipped for the proper treatment and handling of children.

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This legislation also 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 removes the right of an unaccompanied child to first present his or her asylum claim to an asylum officer in a non-adversarial setting and restricts the eligibility criteria for SIJ status to children who've experienced abuse, neglect and abandonment by both parents, instead of just one. These changes greatly increase the chance that a child deserving of humanitarian protection may be returned to face persecution or abuse and neglect.

H.R. 495 also would weaken existing language intended to facilitate access to counsel for unaccompanied children. Due to their age, lack of education, language and cultural barriers, and the complexity of U.S. immigration law, these children face often insurmountable obstacles to proving their claims for protection before an Immigration Judge or asylum officer on their own. In fact, they may not be able to understand the nature of, much less be able to meaningfully participate in, their immigration proceedings. Even under the current system, only about fifty percent of children have legal representation. Legal representation not only protects the child, but also often improves the efficiency of the court process and helps to ensure that the child and his or her sponsor understand the responsibility to appear in court. In addition, the bill's provision requiring that children appear before an immigration judge within fourteen days would exacerbate the difficulties in accessing representation and further undermine the fairness of the proceedings. Any proposals to weaken the already insufficient measures in place to assist children in obtaining counsel and to expedite the adjudication process should be rejected.

While the number of unaccompanied children entering the country has decreased significantly in the last several months, we recognize that the previous surge 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 unaccompanied children. We strongly urge you to oppose H.R. 495 and any similar legislation.

Sincerely,



Thomas M. Susman

Director

Governmental Affairs Office

cc: Members of the House Judiciary Committee