



Women and Children Seeking Protection Are Not “Loopholes”

Immigration legislation should not attack those fleeing violence who already face hurdles to protection

Women’s Refugee Commission firmly believes in the need to protect the hundreds of thousands of Dreamers who are an integral part of communities around the United States. In its immigration proposals, however, the White House has frequently sought to gut protections it portrays as legal “loopholes” that are crucial to saving the lives of children, families, and others seeking protection. **No deal on immigration should trade the lives of one group of vulnerable individuals for another.** Children and adults escaping violence are not benefiting from a loophole, nor do they pose a threat to border security. Instead, they fled to find safety and fairness in **an immigration process they have a legal right to access.** The United States has a long history of protecting the persecuted and a clear obligation under domestic and international laws not to return women, children, and others to places where they fear persecution or to return children into the hands of traffickers.

1. **Asylum seekers will languish in costly and inhumane detention facilities, unable to even present their case before an immigration judge, and are likely to be returned to harm.**

It is not illegal to apply for asylum. Each day, individuals who had no choice but to flee violence and who fear persecution in their countries arrive at our borders asking for help. At minimum, their case should be evaluated by an immigration judge, and they ought to be allowed to pursue their case from the community if they pose no risk to public safety. Yet the administration’s most recent [framework](#) likely includes **measures that would result in an increase in the detention of asylum seekers at great expense to the taxpayer, prevent them from being released, and make it significantly harder for them to even get a hearing before an immigration judge to present their case.** It would expand a costly detention system that is motivated by profit and politics, not public safety. Women’s Refugee Commission has long [documented](#) the obstacles a woman already faces when she arrives in the United States legally asking for safety. These new proposals would make it almost impossible.

2. **The fate of an unaccompanied child’s case will be determined by a border official, and children will be at risk of being returned into the hands of traffickers.**

U.S. law has recognized that children arriving at the border in need of safety should get additional safeguards to ensure that the United States does not return them to a situation that could harm them. Gutting those protections in the name of border security does not make the United States safer, nor our borders more secure. Women’s Refugee Commission fears that **the administration will look to redefine and significantly limit who qualifies for the additional procedural protections granted to a child, and will want children to only have a cursory screening at the border that risks returning them to harm.** Those children who are not immediately returned may find themselves in detention for longer periods of time in settings not appropriate to vulnerable children.

Congress should reject legislation that seeks to undermine the U.S. commitment to protection, including measures that would:

- 1. Raise the “credible fear” standard for asylum seekers in expedited removal.** Credible fear interviews were intended as a safeguard from summary deportation for an individual who may face persecution if they are deported to their country. The interview does not grant asylum, but is merely a preliminary screening to determine if an asylum seeker will even be allowed to present her asylum case to an immigration judge. Raising the standard for such a screening, which occurs while an asylum seeker is in immigration detention and was always designed to have a low threshold, could result in the United States returning women and men fleeing violence and with bona fide claims to asylum back to harm.
- 2. Expand detention or result in prolonged detention.** The U.S. already spends over \$2 billion each year to detain nearly 40,000 immigrants on any given day, a number that the Trump administration has sought to increase. Over the last several years the number of women in detention and the number of asylum seekers, including women and children, has [substantially grown](#). Women report poor treatment and inadequate medical attention; WRC filed a [complaint](#) documenting numerous cases of pregnant women detained and denied appropriate care. Once detained, asylum seekers are often either offered an impossibly high bond or denied bond, parole, or release into an alternative to detention program entirely. This is despite incredibly effective [community-based alternatives](#) to detention that [cost a fraction](#) of detaining a woman or other asylum seeker in a detention facility.
- 3. Deport unaccompanied children without adequate screening for trafficking and other protection concerns.** The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) filled a crucial legislative gap in U.S. anti-human trafficking efforts. Prior to the TVPRA, migrant children were not being screened by the Department of Homeland Security (DHS) to determine if they were survivors or at risk of trafficking. Many unaccompanied children were summarily returned to Mexico without anyone confirming their nationality or even asking if a return would be safe, meaning children were returned to dangerous smugglers and traffickers waiting on the Mexican side of the border. The TVPRA fixed this problem by requiring that DHS at least minimally screens unaccompanied children from Mexico for trafficking concerns and by reaffirming requirements in the Homeland Security Act of 2002 that unaccompanied children be transferred within 72 hours to the custody of the Department of Health and Human Services (HHS).
- 4. Restrict access to asylum and protection for unaccompanied children.** Unaccompanied children, like adults in immigration proceedings, have no right to government counsel and are often forced to navigate the complicated immigration process alone. Current law protects unaccompanied children by ensuring they have a fair chance to tell their story, including providing adequate time to find legal assistance, and permitting unaccompanied children to present their case first to an asylum officer, rather than in the adversarial setting of an already overburdened immigration court system.

PROPOSALS TO TRADE ONE GROUP OF VULNERABLE PEOPLE FOR ANOTHER MUST BE REJECTED

Women and children seeking protection at our borders are not a loophole, nor do they pose a threat to the immigration system. Their ability to lawfully seek protection at and within our borders has long been enshrined in domestic and international laws with the recognition that the United States must not knowingly send people back to harm or their deaths.