



The Secure the Border Act's Catastrophic Implications for Unaccompanied Children

The Secure the Border Act of 2023 (H.R. 2) would end the U.S. protection system for unaccompanied children as we know it. This bill would not only eliminate core anti-trafficking protections for unaccompanied children who seek safety at the border, but also make it all but impossible for unaccompanied children within the United States to obtain legal relief. In doing so, the Act would decimate bipartisan safeguards for this uniquely vulnerable population and ensure children's return to human trafficking, sexual exploitation, and extreme violence. KIND urges Members of Congress to reject this legislation and to embrace reforms that build upon, rather than tear down, existing protections.

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

- By prohibiting Office of Refugee Resettlement (ORR)-funded legal counsel for unaccompanied children, the Act would deprive these children of their best and often only defenders against [exploitation](#) and trafficking—forcing them to face a complex, adversarial legal system alone without any meaningful chance of due process.
- This prohibition is on the wrong side of the American public, [77 percent of whom want to expand](#), not restrict, legal counsel for unaccompanied children who can't afford it—including 68 percent of conservatives.
- By eliminating government-funded attorneys from already inefficient immigration courts, the bill would lead to postponements of proceedings, longer hearings, and reduced appearance rates—deepening court system strain.

The Act would replace the legal process currently available to most unaccompanied children with a cursory screening that would all but guarantee children's summary return to human traffickers and other bad actors.

- Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the Department of Homeland Security (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.
- The Act would not only 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 subject unaccompanied children from non-contiguous countries to this same deficient screening process, eliminating their right under existing law to a robust trafficking assessment and a fair legal process before an immigration judge.
- In doing so, the Act would guarantee a grossly inadequate protection framework *for every unaccompanied child* at the border, virtually ensuring children's summary return to trafficking and sexual abuse.

The Act would subject many unaccompanied children to jail-like CBP detention for up to 30 days—ten times longer than permitted under current law.

- In recognition of unaccompanied children's unique vulnerabilities, the TVPRA and *Flores* Settlement Agreement require DHS to transfer them from [jail-like CBP border facilities](#) into child-appropriate ORR shelters within 72 hours. The Act would prolong that timeframe from three days to 30, resulting in profound trauma to detained children, overcrowding in CBP facilities, and strain on border operations.

The Act would short-circuit due process for any unaccompanied children who aren't summarily returned at the border by requiring them to undergo an immigration court hearing within 14 days of their protection screenings.

- It is virtually impossible for unaccompanied children to obtain counsel, meaningfully learn about their legal rights and obligations, or begin preparing their cases within a 14-day period. Mandating this timeframe would slash due process for children as young as three and four years old.

- This requirement would also produce widespread inefficiencies in an [already severely backlogged immigration court system](#). Because most children remain in ORR custody within 14 days after transfer from DHS custody, the local immigration courts at which their initial hearings would take place would often be located hundreds or thousands of miles from the immigration courts to which their cases must be transferred upon placement with sponsors, imposing resource-intensive changes of venue on court personnel and government attorneys alike.

The Act 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 current law, 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 Act alters SIJS criteria to require children to demonstrate an inability to reunify with *both* of their parents due to abuse, abandonment, or neglect. It therefore hazards the very outcome Congress sought to prevent through passage of TVPRA: the repatriation of children “into the hands of traffickers *or abusive families*.” (H.R. Rep. No. 101-430 (2007)).

The Act mandates that the U.S. negotiate a “Remain in Mexico” program that could require unaccompanied children to wait alone in dangerous conditions in Mexico pending immigration proceedings in the United States.

- The Act contains no apparent exemption for unaccompanied children from this Remain in Mexico mandate—going beyond even the Trump Administration’s extreme Remain in Mexico policies, which expressly exempted such children in light of their particular vulnerabilities.
- This program could therefore render children who lack parental protection vulnerable to predation by cartels and other bad actors in Mexico for periods of months if not years.

By requiring DHS-ORR information-sharing on potential sponsors’ immigration status, the bill would split apart loving families, heighten taxpayer expense, and worsen CBP overcrowding.

- The bill would not only require ORR to share information with DHS on potential sponsors—including those potential sponsors’ immigration status—but also direct DHS to initiate removal proceedings against those individuals if they lack such status.
- These requirements could lead directly to the deportation of loving parental sponsors who are fully qualified to care for unaccompanied children and would serve their best interests—splitting numerous families apart even as children attempt to navigate their own legal proceedings and transition into their new communities.
- By fanning fears of immigration enforcement among potential sponsors, the Act would also deter good faith family members from filing sponsorship applications. This deterrent effect would prolong children’s stay in ORR custody, drive up associated taxpayer expense, and exacerbate CBP overcrowding.

The Act would threaten unaccompanied children’s safety and well-being while in federal government custody by prohibiting state licensing requirements for ORR and other facilities.

- A pillar of *Flores* is the general requirement that the U.S. government transfer unaccompanied children to state-licensed facilities that must “comply with all applicable state child welfare laws and regulations.” State licensing of these facilities [is a prerequisite](#) for ensuring that basic child welfare standards essential to unaccompanied children’s safety and well-being are consistently upheld.
- State licensing regimes articulate minimum standards for ORR shelters—standards that in many cases exceed the floor set by *Flores* and other relevant federal requirements. By eliminating state licensing, the Act would plunge ORR facility standards to the lowest common federal denominator, undermining care and services for thousands of unaccompanied children in ORR custody and increasing the likelihood that harms to these children would remain unidentified and unremedied.