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**Statement of the American Immigration Lawyers Association
Submitted to the Committee on the Judiciary of the U.S. House of Representatives
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Asylum Reform and Border Protection Act of 2017 (H.R. 391)**

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The American Immigration Lawyers Association (AILA) is the national bar association of more than 15,000 attorneys and law professors who practice and teach immigration law. AILA respectfully opposes the “Asylum Reform and Border Protection Act of 2017” ([H.R. 391 as introduced](#)), including the [Amendment in the Nature of a Substitute to H.R. 391](#). If passed, this bill would dramatically alter U.S. asylum and humanitarian protection law in a manner that would subject asylum seekers to grave harm. AILA urges Congress to reject this bill that would curtail fundamental due process and betray America’s proud tradition of welcoming those who are fleeing persecution. Below is a list of some of the most harmful provisions in H.R. 391.

Heightens the Credible Fear Screening Requirement

Credible fear interviews (CFI) are preliminary screenings to determine whether an asylum seeker is later allowed to go before an immigration judge for a full hearing on their asylum claim. H.R. 391 would set a higher standard of proof for these initial CFI screenings, requiring individuals to not only prove a “significant possibility of establishing eligibility for asylum,” as current law requires, but also prove that it is more likely than not that their statements are true. CFIs are generally conducted very soon after the person comes into contact with immigration officials and expresses a fear of returning to their home country. Most CFIs occur while the asylum-seeker is detained, which means that applicants are often unable to gather evidence or retain counsel before a CFI.

Recognizing these constraints, it is important that the standard of proof reflect the fact that CFIs are only meant to be an initial screening to determine if the person will receive a hearing before an immigration judge. The standard proposed in H.R. 391 would deny many bona fide asylum seekers protection from violence and persecution and would result in many being sent back into harm’s way, violating the principle of non-refoulement, the cornerstone of asylum law.

Detains asylum seekers unnecessarily

This bill requires the unnecessary detention of asylum seekers who have already shown that there is a significant possibility of establishing their eligibility for asylum. These individuals frequently need medical and mental health services to start recovering from trauma they experienced in their home countries. By severely restricting parole and requiring the prolonged detention of asylum seekers, the bill will compound trauma asylum seekers have already experienced and/or trigger further trauma. In the course of representing many families and individuals who are applying for asylum while detained, AILA members have witnessed first-hand the deleterious effects of physical detention upon people who are extremely vulnerable. Detention should be used only in rare cases when it is justified and should not be categorically mandated as H.R. 391 proposes.

Forbids the government from providing counsel in any removal case, including for children, those who lack mental capacity, and other vulnerable persons

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Despite the grave consequences that can result from the wrongful deportation of a bona fide asylum seeker, the vast majority of people in removal proceedings are not represented by legal counsel and as a result have little chance of receiving a meaningful hearing in their cases. While the federal government typically does not pay for counsel for those who cannot afford it, federal statute authorizes the government to provide and pay for counsel. H.R. 391 would bar the government from ever paying for counsel, making it nearly impossible for children, persons with mental disabilities, or otherwise indigent and vulnerable persons to obtain legal counsel. [Studies](#) have confirmed that representation increases the appearance rates at court and helps judges process cases more efficiently, fairly, and quickly.

Imposes sweeping restrictions that would preclude a large number of individuals from accessing protection if they were persecuted on account of their membership in a social group

H.R. 391 includes sweeping language that fundamentally redefines asylum law protections and would bar numerous categories of applicants including women that are victims of domestic violence and sexual assault as well as lesbian, gay, bisexual, or transgender applicants. The bill makes it far more difficult for such crime victims and people who legitimately are in fear of being a crime victim to qualify for asylum. Among the most significant and harmful changes the bill makes is to eliminate completely from asylum law the “particular social group” category of protection for crime victims and those who fear being a crime victim. These provisions are overly broad and would strip away protections for those people persecuted on the basis of their membership in a particular social group.

In addition, the bill’s new definition of particular social group would categorically exclude from asylum protection people who are being intimidated and threatened to join gangs, sometimes with threats of violence to the individual’s own family members. Providing protection from forced gang recruitment is among the most compelling reasons to provide asylum protection, and H.R. 391 would eliminate any possibility of protection in these cases.

Codifies into law an unsettled legal standard, out of step with international guidance

The bill would narrow the definition of “particular social group” (PSG) test in a way that would deny asylum to people who fled severe violence, including gender-based violence and gang violence. H.R. 391 would add two new criteria to the definition of particular social group: first a “social visibility” test (referenced in the bill as “social distinction”) and second, a “particularity” test. These two proposed criteria were set forth by the Board of Immigration Appeals’ (BIA) yet it has been contested by federal courts. *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). Courts of Appeals have rejected the BIA’s social visibility and particularity requirement, which shuts the doors to legal protection for certain asylum seekers including individuals fleeing gender-based violence, gang violence, and other forms of persecution. *See Sazo-Godinez v. Att’y Gen.*, No. 14-4832, 2015 WL 7274836 (3d Cir. 2015); *Rodas-Orellana v. Holder*, No. 14-9516 (10th Cir. March 2, 2015). These requirements are contrary to the [guidance](#) from the U.N. High Commissioner for Refugees. Congress should not enact legislation that undermines the ability of those fleeing violence and persecution from seeking safety in the United States.