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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
Markup of "Protection of Children Act"

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As the national bar association of more than 13,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) respectfully opposes the "Protection of Children Act" (H.R. 5143). Far from protecting children, this bill would harm vulnerable child victims of violence. This is exactly the wrong way to address the regional humanitarian crisis gripping the Northern Triangle. It will result in children who are eligible for, and desperately need, humanitarian protection in the United States being sent back to the violence they escaped. Since 2011, the United States has experienced a dramatic increase in the number of unaccompanied children from El Salvador, Guatemala and Honduras apprehended at our southwestern borders. The escalation in the movement of unaccompanied alien children (UACs) is a regional humanitarian crisis driven primarily by the rapid growth in crime, violence and poverty that has affected Mexico and several Central American countries for many years. The children making the difficult and treacherous migration journey are now younger (many under 13), and a higher percentage are girls.

This humanitarian crisis affects not only the United States but the entire Central American region. The UN High Commissioner for Refugees (UNHCR) reports that Mexico, Panama, Nicaragua, Costa Rica, and Belize have all experienced a spike in migrants coming to their countries to seek asylum. UNHCR reports that from 2008 to 2013 there was a 712 percent increase in asylum applications from nationals of El Salvador, Guatemala and Honduras.

H.R. 5143 would amend the Trafficking Victims Protection Reauthorization Act (TVPRA) to undermine the fundamental principles governing the care and protection of unaccompanied children that have been developed over the past two decades. The TVPRA is bi-partisan legislation that was unanimously approved in the Senate. The TVPRA's provisions should not be abandoned when our nation has the opportunity to help with this temporary humanitarian crisis.

Downgrading Due Process for Child Victims

H.R. 5143 lowers the due process standards for unaccompanied children who come to the United States by subjecting all unaccompanied children to an expedited screening mechanism. A

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fundamental flaw in this mechanism is its reliance on Border Patrol officials to identify trafficking, persecution and other refugee claims. UNHCR has concluded that this screening mechanism--as is currently applied to Mexican children--is ineffective and often results in the return of children to situations of trafficking and persecution.

Currently, the TVPRA requires that unaccompanied children from non-contiguous countries be transferred out of the custody of the Department of Homeland Security (DHS) and into the custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) within 72 hours of identification. ORR screens the children for medical and other immediate needs as well as for vulnerability factors such as trafficking or fear of persecution.

By contrast, under current law Mexican children face nearly automatic repatriation, with limited screening for relief that takes place within 48 hours (but typically 12 hours) of apprehension, and without the advice of counsel. Their deportation decisions are not made by immigration judges, but by Customs and Border Protection (CBP) officers and agents. No matter their country of origin, traumatized children cannot be expected to express to an armed Border Patrol agent the details of their trafficking experiences. For any unaccompanied child, CBP facilities are not a suitable environment for interviewing minors, nor are CBP officers and agents the best officials to conduct interviews about sensitive topics such as persecution, trafficking, and other possible trauma.

Not only would H.R. 5143 require that all children go through this potentially re-traumatizing process that does not serve to protect victims, but it would strip existing protections for the most vulnerable children, including the very young and those with intellectual disabilities, by removing the TVPRA's requirement that DHS first ascertain whether the child is able to make an independent decision to withdraw his or her application for admission to the United States.

Under H.R. 5143, those few children who are in fact identified as victims through this hasty Border Patrol screening would then have to make their case before an immigration judge within 14 days without the guarantee of counsel. Fourteen days is not nearly sufficient time to prepare an asylum case even with legal counsel. This severely truncated system would result in the return of child victims back into the hands of their traffickers and abusers. Under H.R. 5143, this system would completely replace the initial jurisdiction that the U.S. Citizenship and Immigration Service's Asylum Office currently has over asylum applications for unaccompanied children.

All Unaccompanied Children Should Receive Better Screening and Protection

Instead of lowering standards for children from noncontiguous countries, AILA recommends that Congress raise the standards for screening and protection for all unaccompanied children.

- All unaccompanied children should be screened by a professional with training in child welfare, trauma, counseling, and international humanitarian and immigration law.
- Protocols for screening unaccompanied children could be improved upon by adopting best practices from the criminal justice and child welfare fields which have developed comprehensive protocols for rape, sexual assault and child abuse cases. These criminal justice and child abuse practices are designed to ensure that complainant victims are given adequate time to report such incidents given the trauma victims suffer and the need for time to recover emotionally and physically. Interviews should be done in a safe setting and manner that minimizes the likelihood of re-traumatizing the victim.
- All children should be given the opportunity to tell their story in an environment where the full and fair adjudication of their protection claims can take place before a neutral, trained adjudicator.
- All children should be provided counsel in removal proceedings when they cannot afford a private attorney or obtain pro bono counsel. Children who have survived trauma or persecution or live in fear of return should not be left to navigate the laws on their own. The lack of counsel compounds the vulnerability of children as they move through our nation's complicated removal system.

Detention and Custody of Unaccompanied Children

For those few children who would be identified through the expedited screening process as victims, H.R. 5143 significantly lengthens the amount of time they would spend in DHS custody before being transferred to the more child-appropriate custody of HHS.

The bi-partisan TVPRA requires that within 72 hours of identification by any federal government agency, unaccompanied children from non-contiguous countries must be transferred into the custody of the ORR. Once a child is in ORR custody, ORR screens the child to identify medical and other immediate needs. ORR is required to place the child in the least restrictive setting that is in the best interest of the child. Typically, ORR will try to identify a relative who is able to care for the child. However, those children who remain in the government's legal and physical custody may not be detained with non-relative adults. Moreover, ORR is required to place the child in non-secure facilities unless ORR has made a determination that the child poses a danger to herself or others or has been charged with having committed a criminal offense. Those who do not have a suitable relative remain in the custody of ORR and are typically placed in non-secure facilities, such as group homes, until their immigration case is resolved.

Many of the unaccompanied children from the Northern Triangle who were apprehended by Border Patrol in 2014 have close relatives already in the U.S. who are willing and able to care for them while they pursue their legal claims, and the existing system facilitated these relatives taking over the care of these children when it was safe to do so.

H.R. 5143, by contrast, would likely result in children spending extended periods of time in short-term DHS holding facilities at the border that are ill-equipped for the proper medical, forensic or psychological care of children. Moreover, the bill's provision to lengthen DHS custody for children beyond 72 hours runs headlong into existing protections for all migrant children in the *Flores Settlement Agreement* that requires children to be placed in the least restrictive setting and not to be housed with adults.

Compromising Child Safety by Baiting and Catching Relatives

Before placing an unaccompanied child with an adult guardian here in the U.S., H.R. 5143 requires that the adult must provide information to DHS about their immigration status and their location that could result in their deportation. In fact, H.R. 5143 states that DHS must initiate removal once it is known that the person is unlawfully present. Under this "bait-and-catch" scheme, families will not come forward to reunify with these children. H.R. 5143 disregards the child protection principle established under current law, which does not require immigration enforcement against relatives who step forward, and instead, ensures children are able to be placed in a safe, least-restrictive environment consistent with national child welfare standards.

Denying Protections to Victims of Child Abuse, Neglect or Abandonment

H.R. 5143 seeks to undo protections Congress created for vulnerable children by granting protection only to children who suffered abuse, neglect or abandonment at the hands of **both** parents and who cannot be reunified with **either** one. Pursuant to federal law enacted by Congress, child welfare advocates and state juvenile dependency courts have helped many children obtain Special Immigrant Juvenile Status on grounds that they have suffered terrible violence, abuse, or rape by **only one** parent. H.R. 5143 would leave these children without the vital protection that legal immigration status can provide.

Conclusion

The current legal standards protecting unaccompanied children are among the most carefully developed in the world. Our nation should not scale back its protections for vulnerable children. The situation in the Northern Triangle presents an opportunity for the United States to demonstrate its leadership and affirm its commitment to humanitarian and child protection.

Thank you for your attention to this important matter. If you have questions or concerns, feel free to contact Gregory Chen, AILA's Director of Advocacy, gchen@aila.org, 202/507-7615.