

# ASYLUM REFORM AND BORDER PROTECTION ACT OF 2017

## H.R. 391

Introduced by Congressman Jason Chaffetz (R-UT), January 10, 2017

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Tahirih's clients, who survive horrific abuses such as rape, torture, trafficking, and domestic violence, currently face enormous obstacles to securing lawful immigration status. Women and girls seeking humanitarian relief such as asylum and Special Immigrant Juvenile Status must already meet rigorous legal and evidentiary standards, often with little access to critical evidence to support their claims. If enacted, H.R. 391 will further restrict our clients' access to these remedies. With no meaningful opportunity to seek safe haven, our clients risk further atrocities and even death in their home countries. We therefore strongly oppose H.R. 391.

### H.R. 391:

- **Imposes an inappropriately higher standard for determining whether refugees subject to expedited removal may even apply for asylum.** As a threshold matter - in order to *apply* for asylum before the immigration courts - those subject to the expedited removal process must demonstrate a "significant possibility of establishing eligibility for asylum."<sup>1</sup> Section 4 of H.R. 391 adds yet another *preliminary* requirement – that the individual show that "it is more likely than not" that her statements are true. During this initial "credible fear" screening, traumatized women and girls already face adverse circumstances. They are detained, and must recount sensitive details of horrific abuse to immigration officials through interpreters and/or over the phone, without access to legal representation, witnesses, and evidence. Citing high approval rates, proponents of the higher standard mischaracterize the current process as a "rubber stamp" approval by the U.S. government. However, the severe and relentless violence rampant in our clients' and others' home countries is indisputable.<sup>2</sup> Despite the obstacles they endure, many do establish an initial "credible fear" because they genuinely face persecution as defined by our longstanding asylum laws and international obligations.<sup>3</sup>

In addition, as explained above, an "approval" at credible fear stage simply constitutes permission to *apply* for asylum before the immigration court. Once there, an applicant must present her case in great detail, through a lengthy and rigorous process. Both the Department of Homeland Security and the Immigration Judge thoroughly evaluate each claim on its legal and evidentiary merits. Asylum is anything but guaranteed, and grant

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<sup>1</sup> 8 U.S.C. 1225(b)(1)(B)(v).

<sup>2</sup><http://www.unhcr.org/5630f24c6.html>; <http://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america>; <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

<sup>3</sup> See the Refugee Act of 1980 and The United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees, of which the U.S. is a signatory (the "Refugee Convention").

rates vary widely around the country. In 2015, a mere 8246 asylum claims were granted by the immigration courts.<sup>4</sup>

H.R. 391's heightened screening standard will, as intended, wrongfully prevent women and girls fleeing horrific violence from even presenting their cases in court. Our asylum laws are intended to, at the very least, afford refugees meaningful access to the asylum process consistent with the U.S.' unequivocal obligation of *non-refoulement*.<sup>5</sup> The consequences of *refoulement* are severe and avoidable; rejecting H.R. 391 will prevent more women and girls from suffering a violent and tragic fate at home.

- **Prevents the majority of asylum seekers, who pass the initial credible fear screening interview, from being paroled into the U.S.** It is well-documented that asylum seekers have a natural incentive to appear for their hearings in immigration court. Above all else, they are eager to have their cases heard and seek to avoid detention, insecure legal status, and *refoulement*.<sup>6</sup> According to U.S. government data, families represented by counsel appear for their hearings in immigration court 98% of the time.<sup>7</sup> Prolonged detention of vulnerable women and girls in jail-like settings is well-known to be re-traumatizing and contrary to U.S. domestic laws and international humanitarian obligations.<sup>8</sup> Limiting the availability of parole for traumatized refugee women and girls is inhumane and unnecessary, particularly when highly successful and more cost-effective alternatives can be used.<sup>9</sup> We therefore oppose the proposed reforms in Section 6 of H.R. 391.
- **Prevents certain immigrant victims of child abuse from securing Special Immigrant Juvenile Status, even if removal will likely result in the child's return home to the abusive parent.** Currently, a child who is abused by *one or both* parents may petition for Special Immigrant Juvenile Status (SIJS) when a U.S. state court finds that it is not in the child's best interest to return to her home country.<sup>10</sup> Section 3 of H.R. 391, however, bars protection for a child who suffers abuse at the hands of *only one parent*. For a child whose non-abusive parent resides in the U.S., and whose abusive parent resides in her home country, H.R. 391 will result in either return of the child to the abusive home from which she fled, or life on the street. SIJS is already a narrowly defined remedy that prohibits any

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<sup>4</sup><https://www.dhs.gov/immigration-statistics/yearbook/2015/table16>.

<sup>5</sup> *Non-refoulement* is the international law principle forbidding return of a persecuted individual to her country of persecution, as outlined in Article 33 of the Refugee Convention.

<sup>6</sup> <http://www.refworld.org/pdfid/51a6fec84.pdf>.

<sup>7</sup><http://www.humanrightsfirst.org/sites/default/files/hrf-immigration-court-appearance-rates-fact-sheet-nov2016.pdf>.

<sup>8</sup>[http://lirs.org/wp-content/uploads/2014/11/LIRSWRC\\_LockingUpFamilyValuesAgain\\_Report\\_141114.pdf](http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf);  
<http://www.migrationpolicy.org/article/us-detention-asylum-seekers-and-human-rights/>.

<sup>9</sup> For example, between 2011 and 2013, the Intensive Supervision Appearance Program (ISAP) reported an appearance rate of 99% for participants in the program's full-service component. <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>; See also [http://lirs.org/wp-content/uploads/2014/11/LIRSWRC\\_LockingUpFamilyValuesAgain\\_Report\\_141114.pdf](http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf) at 20-22.

<sup>10</sup> 8 U.S.C. 1101(a)(27)(J)(i).

parent from securing immigration status through a child beneficiary of SIJS. Section 3 of H.R. 391 is unconscionable and should be opposed, and current SIJS protections that prioritize children's well-being should remain as they are.

- **Narrows legal protections for unaccompanied children, heightening their risk of return to traffickers or persecution at home.** Currently, asylum seekers are subject to a one-year asylum filing deadline, with limited exceptions.<sup>11</sup> The deadline often results in arbitrary denials of protection to genuine refugees. Recognizing the particular vulnerability of unaccompanied children, and the unique obstacles they face, our laws appropriately exempt them from the deadline. Section 9 of H.R. 391, however, eliminates this exemption. It is unreasonable and inhumane to expect unaccompanied minors who have suffered severe trauma to be able to comply with the deadline. The result will be to punish precisely those child survivors of trafficking and other horrors who desperately need protection the most. Additionally, Section 8 of H.R. 391 narrows the current definition of an “unaccompanied child,” and Section 10 increases the length of time that U.S. Immigration & Customs Enforcement (ICE) is permitted to maintain custody of children prior to transfer to the U.S. Department of Health and Human Services (HHS). Tahirih opposes these provisions in order to maximize protection for the most vulnerable asylum seekers.
- **Prevents individuals from receiving asylum if they pass through a country prior to arriving in the U.S., even if they are not entitled to legal status there; permits removal of refugees to transit countries, where there is no relevant agreement between the U.S. and the transit country.** Currently, asylum seekers who pass through another country on their way to the U.S. may still receive asylum here if they prove that they are unable to secure lawful status in the transit country. H.R. 391, however, prohibits asylum even if an individual, including an unaccompanied child, cannot return to a transit country through which she passed during her flight from persecution. This provision leaves refugees in an unsustainable, perpetual state of limbo, with no place to go and no hope of a stable future. Instead of being able to seek asylum, vulnerable women and girls with legitimate claims for protection could summarily be returned to a country of transit that will then return them home to face more persecution.
- **Increases the number of immigration judges and ICE trial attorneys.** Tahirih strongly supports Section 13 of H.R. 391, which will increase capacity for the immigration courts and help reduce lengthy backlogs and inefficiencies. Reducing backlogs conserves detention resources as well, lessens the risk of refugee re-traumatization, and allows asylees to more quickly integrate into our communities to the benefit of society as a whole.

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<sup>11</sup> 8 U.S.C 1158 (a)(2)(B).