



Analysis of the Protection of Children Act

By Dan Cadman

The House Judiciary Committee of the new Congress has begun work in earnest on a number of substantive immigration reform bills — none of which are omnibus — tending instead to hew to the safer, and wiser, course of addressing particular problems in the way our immigration laws are administered and enforced (to the extent that there is any enforcement at all being performed under the Obama White House).

One of the bills passed by committee vote on March 3 is the Protection of Children Act (PCA), introduced by Rep. John Carter (R-Texas).¹

Background

The PCA is, essentially, a reformulation of a bill that Rep. Carter co-introduced along with Rep. Robert Aderholt (R-Ala.) in the last Congress, where it languished.²

The focus of the PCA is on border surges such as the one experienced for several months last year, and in particular on the treatment of alien minors who arrive as a part of such surges. It's relatively short and direct as acts of Congress go, which is highly creditable in this day and age, where often what we think we see is not in fact what we get because of the fine print buried in legislation.

The bill would amend the pertinent portions of three important provisions of existing law:

- The portion of the Trafficking Victims Protection Reauthorization Act (TVPRA) dealing with how unaccompanied alien minors are treated upon interdiction at the border;
- The portion of the Immigration and Nationality Act (INA) that defines “special immigrant juveniles”; and
- The portion of the INA that deals with how asylum claims, including those filed by alien minors, are handled.

Section-by-Section Analysis

Section 1. Establishes the short title of the bill as the Protection of Children Act of 2015.

Section 2. This section amends, in several significant ways, Section 235 of the TVPRA (otherwise known as the “Wilberforce Act”), which establishes statutory standards for dealing with unaccompanied alien children who cross the border illegally.³

- First, it eliminates the invidious distinction between minors from countries that are contiguous vs. non-contiguous to the United States, while at the same time authorizing the Secretary of State to engage in repatriation agreements with any appropriate countries, instead of limiting them only to certain non-contiguous nations. This is significant because such agreements establish baseline standards for the safe return and reintegration of children into the societies from which they came.

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- Second, it establishes a “speedy trial” requirement for children who may be victims of severe forms of trafficking so that their cases will be fast-tracked before immigration judges without undue delay. This provision mandates that such cases must be initiated within 14 days.
- Third, it specifies that, although children in proceedings should be represented by counsel to the greatest extent possible, it must be “at no expense to the government”. This is a reiteration and emphasis of existing statute,⁴ which lawmakers likely have inserted after the administration attempted to provide substantial amounts of money to non-governmental organizations and legal aid groups in order to represent aliens, including minors, who came during last summer’s surge into the Rio Grande Valley of Texas.
- Fourth, this section establishes identification standards, as well as information-sharing protocols between Homeland Security and Health and Human Services, to minimize the possibility that alien minors will be placed into the hands of inappropriate caregivers, abusers, or traffickers.
- Fifth, having eliminated the distinction between contiguous and non-contiguous countries, Section 2 clarifies the expectation, as well as the legal basis, for prompt return of minors to their countries of origin, absent either evidence that they have been, are, or will be subject to severe forms of human trafficking, or have a legitimate claim to asylum under the five grounds recognized in both international and domestic law.

Section 3. Significantly, the bill at Section 3 amends Section 101(a)(27)(J) of the Immigration and Nationality Act (INA),⁵ dealing with the definition of special immigrant juveniles (SIJs). The bill clarifies that *only* those alien minors who cannot be reunified with either parent (as opposed to both parents, as specified under current law) may qualify for SIJ green cards. Closing this loophole is important because if the child can appropriately be reunited with either of the two parents, there is no rational reason why he or she should become a ward of the state or accorded status as a special immigrant.

Section 4. Amends Section 208 of the INA, which deals with how asylum claims, including those filed by alien minors, are handled.⁶ Section 4 divests asylum officers of initial jurisdiction in cases involving unaccompanied alien minors and instead invests jurisdiction directly and solely with immigration judges. This is consistent with other provisions of the bill by introducing a streamlined procedure in which minors’ asylum applications may be heard in a single forum, thus eliminating delays in full and final adjudication of their cases.

Conclusion

Along with the Asylum Reform and Border Protection Act introduced by Rep. Jason Chaffetz (R-Utah) in the last Congress (another very good bill that also went nowhere),⁷ the prior version of the PCA was one of the best efforts undertaken to make important reforms to the way in which alien minors are treated when caught crossing the border illegally. It’s heartening to see that it has been reintroduced by Rep. Carter.

End Notes

¹ [The Protection of Children Act, H.R. 1149](#), 114th Congress, 1st Session.

² The prior bill was reviewed by the author at the time it was submitted in the last Congress. That review, "[Carter-Aderholt: A Better Border Surge Bill](#)", was published by the Center on August 1, 2014. This analysis is an update of that product.

³ Section 235 of the TVPRA is codified at [8 U.S.C. 1232](#).

⁴ INA Section 292, codified at [8 U.S.C. 1362](#), states: "In any removal proceedings before an immigration judge and in any appeal proceedings before the attorney general from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as he shall choose."

⁵ Section 101(a)(27)(J) of the INA is codified at [8 U.S.C. 1101\(a\)\(27\)\(J\)](#).

⁶ Section 208 of the INA is codified at [8 U.S.C. 1158](#).

⁷ The Asylum Reform and Border Protection Act of 2014, [H.R. 5137](#), 113th Congress, Second Session.